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SUPREME COURT OF THE UNITED STATES.

No. 189.

CHARLES TATE & AL., PLAINTIFFS IN ERROR,

vs.

JOHN G. CARNEY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA, EASTERN DISTRICT.

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Eighth Judicial District Court, Parish of St. Helena, State of Louisiana.

JOHN G. CARNEY, App't,
vs.
CHARLES TATE et als., App'ees. } No. 1,434.

Transcript of Appeal.

McVea & Ellis, and Muse & Hardee, for App'ts; J. R. Jones, M. G. Penn, for App'ees.

5,021.—Supreme Court.—Filed February 23d, 1857.

(Signed) LOUIS R. COURTIN, *D'y Clerk.*

Original Petition.

To the Honorable Judge of the Eighth Judicial District, holding court in and for the parish of St. Helena, State of Louisiana:

The petition of John G. Carney, of the parish of East Feliciana, State of Louisiana, respectfully represents, that at the probate sale of the succession property, pertaining to the estate of one Sarah Corkern, deceased, of St. Helena parish, on the 16th day of March, A. D. 1844, as will appear by reference to the process verbal of said sale, now of record and on file in the mortgage records of St. Helena parish, which will be produced on the trial of this cause, your petitioner became the purchaser and owner of a certain tract or portion of land, containing five hundred and sixty acres, situated on Cool's creek, in said parish of St. Helena, and more particularly described in the above process verbal, for which your petitioner paid the sum of four hundred and fifty dollars into the hands of one Samuel Leonard, then acting parish judge of St. Helena parish, on the 23d day of April, 1844, as will appear by reference to the annexed receipt of said Leonard, herewith filed for explanation. Further, that a short time after said probate sale, to wit, about the first day of May, 1844, one Charles Tate, jr., of the said parish of St. Helena, wrongfully, illegally, and in bad faith, being cognizant of the aforesaid facts, entered upon and took possession of said tract of land belonging to your petitioner, and has been ever since and still is in possession thereof in bad faith, having always refused and still refusing to deliver said property to your petitioner as owner, though often amicably demanded so to do; that the rents and fruits of said tract of land are fully worth the sum of one hundred dollars per annum, to which your petitioner is entitled from the date of the unlawful possession by defendant. Further, that the heirs of said Sarah Corkern, dec'd, are the warrantors of your petitioner, and that one Thomas Wainwright, of said parish of St.

Helena, is the legal representative of said estate, being the administrator thereof.

Wherefore your petitioner prays that said Charles Tate, jr., be cited to appear and answer this petition; that whatever pretended title or claim he may set up be avoided, annulled, and set aside; that your petitioner's right be established; that he be decreed to be the rightful and lawful owner of said property, and as such, recover against defendant; and that said defendant be ordered and adjudged to pay your petitioner the sum of one hundred dollars per annum, for the whole time of such detention and possession by defendant, and costs of suit.

But if this hon. court should be of the opinion that the pretended title or claim, which the defendant may set up, is good and legal, and that your petitioner has no just right to the aforesaid property, then your petitioner prays that said Thomas Wainwright, as representative of the estate of said Sarah Corkern, deceased, be cited to appear in warranty and defend petitioner's title, and be condemned to refund to petitioner the said purchase price of four hundred and fifty dollars, with eight per cent. per annum interest, from the date of its payment as aforesaid; and also to pay the further sum of three hundred dollars damages for the eviction of your petitioner, with all costs; and your petitioner further prays for all and general relief, and trial by jury. As he will ever pray, &c.

(Signed) J. E. WILSON, and
ROBERTS & HOWELL,
Atty's for Plaintiff.

Date of filing original petition: Filed 18th May, 1852.
ASHFORD ADDISON, *Clerk.*

Samuel Leonard, P. J., receipt of estate of Sarah Corkern, dec'd, annexed to original petition.

THE STATE OF LOUISIANA,
Parish of St. Helena.

Received of John G. Carney, of said parish and State, the sum of four hundred and fifty dollars, it being for the amount of the purchase of a tract of land situated on Cool's creek, containing five hundred and sixty acres, and belonging to the succession of Sarah Corkern, deceased, wife of Thomas Wainwright, of this parish, and which was at probate sale on the 16th day of March, A. D. 1844, by Henry Leonard, auctioneer of said parish, and in pursuance of an order of the probate court of said parish.

April 23d, 1844.

SAMUEL LEONARD, *P. J.*

Original Citation to Chs. Tate, jr.

THE STATE OF LOUISIANA,
Parish of St. Helena.

Eighth Judicial District Court.

In the case of John G. Carney vs. Charles Tate, jr., et al.

To Charles Tate, jr.:

You are hereby cited to comply with the demand contained in the petition of John G. Carney against you, a copy of which accompanies this citation, or deliver and file your answer thereto in writing with the clerk of the court aforesaid, of the parish first aforesaid, at his office, in the town of Greensburg, in ten days after the service hereof, if your residence be within ten miles of the court-house; but if at a greater distance, the delay is increased one day for every ten miles.

Witness the Honorable Martin G. Penn, judge of the aforesaid court, this 13th day of August, A. D. 1852.

ASHFORD ADDISON, *Clerk.*

Sheriff's Return on Citation.

Rec'd this original citation, with a copy of the same, also a certified copy of plff's petition, August 14th, 1852.

JOHN BICKHAM, *Sh'ff.*

And on the 28th day of said month of August I served copy of this citation and certified copy of plff's on Charles Tate, jr., in person, in St. Helena, about 15 miles from Greensburg.

JOHN BICKHAM, *Sh'ff.*

Date of filing return: Filed 30th August, 1852.

ASHFORD ADDISON, *Clerk.*

Citation to Wainwright.

THE STATE OF LOUISIANA,
Parish of St. Helena.

Eighth Judicial District Court.

In the case of John G. Carney vs. Charles Tate, jr., and Thomas Wainwright, called in warranty.

To Thomas Wainwright, called in warranty:

You are hereby cited to comply with the demand contained in the petition of John G. Carney against you, a copy of which accompanies this citation, or deliver and file your answer thereto in writing, with the clerk of the court aforesaid, of the parish first aforesaid, at his office in the town of Greensburg, in ten days after the service hereof, if your residence be within ten miles of the court-house; but if at a greater distance, the delay is increased one day for every ten miles.

Witness the Honorable Nicholas Baylies, judge of the aforesaid court, this 6th day of April, A. D. 1853.

ASHFORD ADDISON, *Clerk.*

Sheriff's Return on Citation.

Recv'd this original citation April 7th, 1853.
JOHN BICKHAM, *Sh'ff.*

And on the same day served a copy of this citation and certified copy of plaintiff's petition on Thomas Wainwright, by handing it to Mrs. Wainwright, she being a free white person over the age of fourteen years, at his usual place of residence in St. Helena parish, she living in the house with said Wainwright, he being absent.
A. G. BICKHAM, *D'y Sheriff.*

Date of filing return: Filed 9th April, 1853.
ASHFORD ADDISON, *Clerk.*

Citation to Ober Tate, Adm'r.

THE STATE OF LOUISIANA,
Parish of St. Helena.

Eighth Judicial District Court.

In the case of John G. Carney vs. Charles Tate, jr.

To Ober Tate, adm'r of the estate of Charles Tate, jr., dec'd, of the parish of Livingston, and State aforesaid:

You are hereby cited to comply with the demand contained in the petition of John G. Carney against you, a copy of which accompanies this citation, or deliver and file your answer thereto in writing with the clerk of the court aforesaid, of the parish first aforesaid, at his office in the town of Greensburg, in ten days after the service hereof, if your residence be within ten miles of the court-house; but if at a greater distance, the delay is increased one day for every ten miles.

Witness the Honorable George W. Watterston, judge of the aforesaid court, this 13th day of March, A. D. 1855.
J. B. McCLINDEN, *Clerk.*

Sheriff's Return on Citation.

Received the within citation, this March 19th, 1855, and on the 20th day of same month and year served a copy of citation and certified copies of petitions on Obed Tate, adm'r of the estate of Charles Tate, jr., dec'd, in person at his usual place of residence, in the parish of Livingston, State of Louisiana.
W. J. GATES, *Sheriff.*

Date of filing return: Filed March 22d, 1855.
J. B. McCLENDON, *Clerk.*

Citation to Wilson Tate, Tutor.

THE STATE OF LOUISIANA,
Parish of St. Helena.

Eighth Judicial District Court.

In the case of John G. Carney vs. Charles Tate, jr.

To Wilson Tate, tutor to the minor heirs of Charles Tate, jr., dec'd, of the parish of Livingston, State aforesaid:

You are hereby cited to comply with the demand contained in the petition of John G. Carney against you, a copy of which accompanies this citation, or deliver and file your answer thereto in writing with the clerk of the court aforesaid, of the parish first aforesaid, at his office in the town of Greensburg, in ten days after the service hereof, if your residence be within ten miles of the court-house; but if at a greater distance, the delay is increased one day for every ten miles.

Witness the Honorable George W. Watterston, judge of the aforesaid court, this 13th day of March, A. D. 1855.

J. B. McCLENDON, *Clerk.*

Sheriff's Return on Citation.

Received the within citation, this March 19th, 1855, and on the 20th day of same month and year served a copy of citation and certified copies of petition on Wilson Tate, tutor to the minor heirs of Charles Tate, jr., dec'd, in person at his usual place of residence, in the parish of Livingston, State of Louisiana.

W. J. GATES, *Sheriff.*

Date of filing return: Filed March 22d, 1855.

J. B. McCLENDON, *Clerk.*

Exceptions by Chas. Tate.

STATE OF LOUISIANA,
Parish of St. Helena.

JOHN G. CARNEY
vs.
CHARLES TATE, jr., et als. } No. 1,434.

In this case the defendant, Charles Tate, jr., comes into court and pleads the following peremptory exceptions, to wit: 1st. The plaintiff has instituted his suit against the wrong individual, as this defendant denies positively that he ever enterered upon and took possession of the lands mentioned in plaintiff's petition, or any lands claimed or owned by defendant; positively denies ever residing upon, taking possession of, or in any manner interrupting the lands claimed by plaintiff; further says, that he now resides in Livingston parish, and has resided there for some length

of time. 2d. That if this defendant has any interest in the lands claimed by plaintiff, it is as an heir of the estate of John Tate, dec'd, who held and owned one part of said land by inheritance from the estate of his mother, Nancy Tate, dec'd, and that James Tate, of said parish of St. Helena, is the administrator of the estate of John Tate, dec'd.

Your respondent therefore prays to be dismissed at plaintiff's costs.

(Signed) CHARLES TATE.

Date of filing the exceptions by C. Tate: Filed 19th Oct., 1852.

ASHFORD ADDISON, *Clerk.*

Answer and Exceptions of Thomas Wainwright.

JOHN G. CARNEY vs. CHAS. TATE, jr., et al. } No. 1,434.

Eighth District Court, St. Helena.

In this case Thomas Wainwright comes, and in his capacity of administrator, by way of peremptory exceptions and answer, says, that the plaintiff cannot maintain this action against him in the present form, because by the plaintiff's own showing he has voluntarily suffered himself to be deprived of his possession, and he has not taken any step within the delay allowed by law to cause the same to be restored to him, and because plaintiff's demand against this defendant is inconsistent with the demand against said Charles Tate, jr., and because the plaintiff cannot in this informal manner place him in the position of warrantor to him, said plaintiff, and at the same time without power of answering the demand of said as defendant.

This defendant further answering says, that he denies generally and specially each and every allegation in the plaintiff's petition contained, except such as are herein expressly admitted. Defendant alleges that in the year 1842, *that* he acquired title to five hundred and sixty acres of land in said parish, by purchase from John Burton and Barbary Burton, his wife, and J. M. Rainer, as will the more fully appear by reference to the annexed copy of one of said acts, made a part hereof, and the other therein referred to.

Defendant further answering says, that if it shall appear that said plaintiff has suffered any prejudice to his title, it has been done through his own carelessness, and in not giving proper notice to defendant and his warrantors.

Wherefore this defendant prays that said Barbary Burton and John Burton, her husband, and J. M. Rainer, of said parish, may be cited to answer this demand in warranty, and that if any judgment be rendered against this defendant in warranty, that he recover the like sum and interest against said John and Barbary

Burton, and J. M. Raner, in solido, and for general relief, and for a trial by jury.

By E. T. MERRICK, *Att'y.*
For THOMAS WAINWRIGHT, *Adm'r.*

Date of filing the answer of Thomas Wainwright: Filed 20th May, 1853.

ASHFORD ADDISON, *Clerk.*

Judgment on Exceptions.

CARNEY
vs.
TATE et als.

If the question submitted had not been made the subject of preliminary inquiry by the request of counsel, I should have considered the matter urged in the way of exceptions, as a part of the answers to the merits. Since it has been submitted as an application to dismiss one of the parties to the suit, I have determined to sustain it for the following reasons: The administrator of the estate of Sarah Corkern cannot be compelled to maintain this action, or to indemnify the plaintiff in the manner resorted to. The rights of the plaintiff will result from the issue of the suit between Corkern and the alleged trespasser. It may be shown that the former, from his conduct or neglect, has no ground for his demand; or his eventual success may render useless his demand against the party who except. Whenever it shall be ascertained that he has sustained a loss, he will he justified in seeking a proper and sufficient remedy. Nor can it be justly urged, that the recourse had upon the administrator in the present action was necessary to secure the reclamations of the plaintiff against the estate of Mrs. Corkern. The demand made is at all events a sufficient notice, and absolves the plaintiff from the necessity of a similar application, in case it should be requisite. The administrator does not please to sustain the action, and cannot be forced to do so at this time, and by this procedure.

It is therefore ordered, that Thomas Wainwright, administrator of the estate of Sarah Corkern, be dismissed hence at the plaintiff's costs.

August 16th, 1853.

G. W. WATERSTON,
Judge 8th Jud'l Dist. La.

Date of filing judgment: Filed 16th August, 1853.
ASHFORD ADDISON, *Clerk.*

Intervention.

JOHN G. CARNEY
vs.
CHAS. TATE et al.
No. 1,434.

8th Dist. Court, parish St. Helena, La.

In the above case, now come Elizabeth Westmoreland, wife of Lanoir Westmoreland, deceased, Mary Newman, wife of Nehemiah Newman, aided, joined, and assisted herein by her said husband, Harvey Tate, all residents in said parish, and others, heirs and representatives of Nancy Tate, and move the court to allow them to file an intervention in this case.

THOMPSON, *Att'y for Intervenors.*

Date of filing intervention: Filed 25th October, 1852.
ASHFORD ADDISON, *Clerk.*

Answer of Intervenors.

JOHN G. CARNEY
vs.
CHARLES TATE et al. } No. 1,434.

Eighth Judicial District Court, Louisiana, Parish of St. Helena.

And now come James Tate, John Tate, Elizabeth Westmoreland, wife of Lanoir Westmoreland, since deceased, Harvey Tate, Polly Tate, wife of Nehemiah Newman, aided, joined, and assisted herein by her said husband; Catherine Tate, wife of Wilby, now deceased, Jesse Tate and Charles Tate, all heirs of Catherine Tate, and by representation the heirs of Nancy Tate and James Tate, Henry Carter, tutor to the minor heirs of Nancy Tate, wife of Jasper N. Carter, aided, joined, and assisted herein by her said husband; Harvey Tate, Obed Tate, Charles Tate, A. B. Quillin, tutor to the minor heirs of Caroline Tate; Mozilla Tate, wife of Kingan R. Thompson, aided and assisted herein by her said husband, and Elizabeth Tate, wife of Jefferson Waller, aided, joined and assisted herein by her said husband; all the last named being the heirs of John Tate, and by representation the heirs of Nancy Tate; and by way of intervention, waiving citation and call in warranty, adopt the answer filed at a former term of this court in this case, and pray that the demand of plaintiff's petition be rejected, that your respondents be decreed jointly to be the legal owners and proprietors of said tract of land mentioned in plaintiff's petition, through their ancestor the said Nancy Tate; that they be quieted in their said title, and be hence dismissed with their costs, and for general relief in the premises.

By their att'y, IVY F. THOMPSON.

Date of filing answer of interv'ors: Filed 19th May, 1853.
ASHFORD ADDISON, *Clerk.*

Answer of Intervenors.

JOHN G. CARNEY
vs.
CHARLES TATE et al. } No. 1,434.

Eighth Judicial District Court, Parish of St. Helena, La.

In the above suit comes Elizabeth Westmoreland, wife of Lenoir Westmoreland, deceased, Mary Newman, wife of Nehemiah Newman, aided, assisted and joined herein by her said husband, and Harvey Tate, all residents of the parish of St. Helena, the above parties, with others not joined in this answer, being heirs and representatives of Nancy Tate, deceased, waiving the delay and citation of a call in warranty by Charles Tate, one of the defendants in the above suit, and, by leave of the court first had and obtained, intervene in said suit, and for answer to the same, aver that they, your respondents, and others not joined herein, are the legal representatives and heirs of Nancy Tate, deceased; that they claim said land by virtue of inheritance from said Nancy; that said land was confirmed to said Nancy as a settlement claim. Wherefore respondents pray that the demand for eviction and damages made in plaintiff's petition be rejected; that the legal heirs and representatives of said Nancy be decreed to be the legal and proper owners of said tract of land, through their ancestor, the said Nancy Tate; that they be quieted in their title, and that they be hence dismissed with their costs, and for general relief in the premises.

By their att'y,

IVY F. THOMPSON.

Date of filing answer of intervenors: Filed 25th October, 1852.

ASHFORD ADDISON, *Clerk.*

Answer to Interventions.

JOHN G. CARNEY
vs.
CHARLES TATE, jr., et al. } No. 1,434.

Eighth District Court, Parish of St. Helena.

In the above entitled suit now comes the plaintiff, by his counsel, and the leave of the court first had and obtained, and for answer to the interventions herein filed by the heirs of Nancy Tate, dec'd, on the 25th day of October, A. D. 1852, and the 19th day of May, A. D. 1853, denies that said intervenors or their ancestor, Nancy Tate, dec'd, had any title to the tract of land claimed in plaintiff's petition. And further answering, denies that Nancy Tate ever resided upon said tract of land, or any part thereof. And further answering, says that he is the owner of said tract of land by purchase at the probate sale of Sarah Corkern, deceased, of the parish of St. Helena, on the 16th day of March, A. D. 1844, which said sale was made by Samuel Leonard, parish judge of said parish; that said tract of land was sold as the community property of said Sarah Corkern, deceased, and her surviving husband, Thomas Wain-

wright; that Thomas Wainwright purchased said tract of land from John Burton and James M. Rainer. Further answering, says, that he and the persons under whom he claims to hold said tract of land have been in possession of the same in good faith, and as owners openly, peaceably, and notoriously for more than forty years.

Further answering this intervention, this plaintiff now pleads, as a bar to any claim which may be set up by said intervenors, the prescriptions of ten, twenty, and thirty years.

Wherefore he prays that the said interventions be dismissed, with costs, and that it be ordered, adjudged and decreed by the court that the plaintiff be the owner of said tract of land, and that the claim set up by said intervenors be rejected, and for costs and general relief in the premises.

Further answering, says, that if said intervenors should produce any confirmation of settlement claim as set up in their said intervention, that the same was obtained in fraud of the rights of this answerer, and without the proquisite formalities of law.

By his attorneys,

ELLIS, SMITH & D. C. HARDEE.

Date of filing answer to interv'ons: Filed May 18th, 1854.
J. B. McCLINDON, *Clerk.*

Amendment to Interv'on.

No. 1,611.—8th District Court, St. Helena Parish—May Term, 1855.

JOHN G. CARNEY
vs.
CHARLES TATE and his heirs.

In this action the intervenors move to amend their interventions filed in said case by inserting therein that, since the commencement of this action, they have received from the United States a patent confirming and granting to Nancy Tate and her heirs a title to said section No. 42, in township one, range 7 east.

IVY F. THOMPSON,
Att'y for Intervenors.

Date of filing amendment: Filed by consent, May 22d, 1855.
J. B. McCLINDON, *Clerk.*

Waiver of Recusation.

JOHN G. CARNEY
vs.
CHARLES TATE et al.

And now come the defendants and intervenors in the above entitled suit, by their counsel, and waive the recusation of the Hon.

E. T. Merrick, the judge presiding, and move that said recusation be set aside, and that they be allowed to proceed with the trial of this case.

H. DUNCAN,
Att'y for Administrator of Charles Tate, and the Tutor to the minor heirs of Charles Tate.

JONES, THOMPSON, PENN & MARTIN,
Att'ys for Intervenors.

Date of filing waiver to recusation: Filed May 22d, 1855.
J. B. McCLINDON, *Clerk.*

Motion suggesting death of Chas. Tate.

JOHN G. CARNEY
vs.
CHARLES TATE et al. } No. 1,434.

8th Jud. District Court, State of Louisiana, Parish of St. Helena—October Term, 1854.

The counsel for intervenors suggest the death of Charles Tate, the defendant, and move that his legal heirs and representatives be made parties to this suit.

PENN & DAVIDSON,
For Intervenors.

Date of filing motion: Filed October 21st, 1854.
J. B. McCLENDON, *Clerk.*

Answer of Adm'r of Ch's Tate, &c.

JOHN G. CARNEY
vs.
CHARLES TATE et al. }

8th Judicial District Court, Parish of St. Helena, State of Louisiana.

And now comes Obed Tate, administrator of the estate of Charles Tate, deceased, and Wilson Tate, tutor to Martha Jane Tate, John Tate, Poke Tate, Alexander Tate, and Obediah Tate, all minor children, and sole heirs of Charles Tate, deceased, by their attorney, Henry Duncan, in obedience to the notice or citation served upon them, *now come into court* and make themselves parties, and declare that they are owners and legal possessors of the one-sixteenth of the tract of land described in plaintiff's petition; that they hold the same by representation through John Tate, their grandfather, son of Nancy Tate, and under Nancy Tate, to whom the same was confirmed as a donation in virtue of her settlement right, upon which a certificate had been granted, and that, since the commencement of this suit, a patent has been issued in favor of the said Nancy Tate.

Wherefore these, your respondents, pray that the claim and demand set up by the plaintiff be rejected and dismissed; that judg-

ment be rendered in their favor; that they be decreed the legal owners of their interest claimed by them in said land, and that they be forever quieted in their title; that they have judgment for costs, and for general relief.

H. DUNCAN, *Att'y.*

Date of filing answer: Filed May 22d, 1855.
J. B. McCLENDON, *Clerk.*

Motion to make heirs of Jas. Tate parties.

JOHN G. CARNEY
vs.
CHARLES TATE et als. } No. 1,434.

8th District Court, Parish of St. Helena.

In the above entitled suit comes the plaintiff, and suggests the death of James Tate, one of the parties herein, and prays that his legal representatives be made parties, and that Mrs. Tennessee Tate, tutrix to the minor children, be duly cited to appear and answer this motion.

ELLIS, McVEA & HARDEE, *Att'ys.*

Order on Motion.

The foregoing being considered, it is ordered that parties be made as suggested, and that Mrs. Tennessee Tate be duly cited.
Sept. 6, 1856.

JAS. A. WILLIAMS, *Clerk.*

Date of filing motion: Filed September 6th, 1856.
JAS. A. WILLIAMS, *Clerk.*

Citation to Mrs. Tennessee Tate, Tutrix.

THE STATE OF LOUISIANA,
Parish of St. Helena.

Eighth Judicial District Court.

In the case of John G. Carney vs. Charles Tate, jr.

To Mrs. Tennessee Tate, tutrix of said parish and State:

You are hereby cited to comply with the demand contained in the petition of John G. Carney against you, a copy of which accompanies this citation, or deliver and file your answer thereto in writing with the clerk of the court aforesaid, of the parish first aforesaid, at his office in the town of Greensburg, in ten days after the service hereof, if your residence be within ten miles of the court-house; but if at a greater distance, the delay is increased one day for every ten miles.

Witness the Honorable George W. Watterston, judge of the aforesaid court, this 27th day of September, A. D. 1856.

H. E. WILLIAMS,
D'y Clerk.

Sheriff's Return on Citation.

Received this original citation and one copy of same, together with one certified copy of plaintiff's petition, October 6th, 1856, and served the same on the 6th of October, 1856, on Tennessee Tate, in person at her residence, in the parish of St. Helena, fourteen miles from Greensburg, and made this my return, this 8th day of October, 1856.

(Signed) J. D. KEMP, *Sheriff.*

Date of filing return: Filed October 8th, 1856.
JAS. A. WILLIAMS, *Clerk.*

Answer of Adm'r and Tutrix of James Tate, dec'd.

JOHN G. CARNEY
vs. } No. 1,434.
CHARLES TATE et al.

8th Judicial District Court, Parish of St. Helena, Louisiana.

Mrs. Tennessee Tate, administratrix of the estate of James Tate, late of your parish of St. Helena, deceased, and natural tutrix to the minor heirs of said James Tate, deceased, in answer to the citation and to said suit, comes into court and avers that they are joint owners and legal possessors, together with the intervenors in this suit, of the tract of land described in plaintiff's petition; that they hold the same by representation through John Tate, their grandfather, son of Nancy Tate, and under Nancy Tate, to whom the same has been confirmed as a donation claim in virtue of settlement and habitation, upon which a certificate has been granted, and since the commencement of this suit a patent has issued of the said Nancy Tate. Wherefore these respondents pray that the claim and demand set up by the plaintiff be rejected and dismissed; that these respondents with intervenors be decreed to be the joint legal owners and proprietors of said tract of land; that they be forever quieted in their title; that they have judgment for costs, and for general relief.

By IVY F. THOMPSON,
Att'y for Adm'r and Tutrix.

Date of filing answer: Filed October 26th, 1856.
JAS. A. WILLIAMS, *Clerk.*

Answer of Elizabeth Tate.

JOHN G. CARNEY
vs. } No. 1,434.
CHARLES TATE et al.

8th Judicial District Court, Parish of St. Helena, Louis'a.

Mrs. Elizabeth Tate, wife of Emanuel Catrer, residents of the

State of Mississippi, said Elizabeth being emancipated by marriage and authorized to appear herein by her said husband, and the said Emanuel Catrer, by their special attorney, come and make themselves parties to the above suit, and for answer deny, specially and generally, each and every allegation in plaintiff's petition contained, and in plaintiff's answer to intervention, and will require strict and legal proof on the trial. Further answering, respondents allege that said Elizabeth is the daughter of James Tate, late of your parish of St. Helena, deceased, said James Tate being one of the original intervenors in the above suit, and who was an heir of said Nancy Tate, through his father, John Tate, dec'd, son of Nancy Tate, and this respondent being an heir of said Nancy, by representation through said James. Further answering, respondents adopt the answer and plea made in this case by Mrs. Tennessee Tate, administratrix of said James Tate, deceased, and natural tutrix to his minor children, and joining in the prayer of said answer, these respondents pray for the rejection of plaintiff's suit, that they be quieted in title to said tract of land, and for general relief.

By their attorney,

IVY F. THOMPSON.

Date of filing answer: Filed October 20th, 1856.
(Signed) JAS. A. WILLIAMS, *Clerk.*

Answer of Thos. Jennings, Adm'r.

JOHN G. CARNEY
vs.
CHARLES TATE et al. } No. 1,434.

Eighth Judicial District, State of Louisiana, Parish of St. Helena.

In this case, Thomas Jennings, in his capacity of administrator of Mrs. Elizabeth Westmoreland, deceased, one of the original intervenors in the above suit, taking cognizance of the above action, waiving citation and service of copy of petition, and making himself a party to this suit, for answer denies, generally and specially, each and every allegation in plaintiff's petition, and plaintiff's answer to the intervention, and adopting the answer of the administrator and tutor to the minor children of Charles Tate, deceased, would pray that plaintiff's demand be rejected, that these defendants be quieted in their title, and for general relief.

By his att'y,

I. F. THOMPSON.

Date of filing answer: Filed October 20th, 1856.
(Signed) JAS. A. WILLIAMS, *Clerk.*

Sale of Land on Cool's Creek.

(Instrument marked A, offered in evidence by plaintiff.)

THE STATE OF LOUISIANA,
Parish of St. Helena.

Be it remembered, that on this the sixteenth day of March, in the year of our Lord one thousand eight hundred and forty-four, I, Henry Leonard, a duly commissioned auctioneer in and for the parish and State aforesaid, and agreeable to an order of the hon'ble the probate court in and for the parish and State aforesaid, and agreeable to public advertisements, according to law, did proceed at the court-house door, in the town of Greensburg, parish and State aforesaid, to make sale to the highest bidder of a certain tract of land situated on Cool's creek in this parish, containing five hundred and sixty acres, and belonging to the succession of Mistress Sarah Corkern, deceased, wife of Thomas Wainwright of this parish, and bounded as follows: on the north by John G. Carney, south by Harvey Tate, and on the east and west by public lands, upon the following terms, viz., for cash. And I, the said auctioneer, having declared aloud the foregoing terms of said sale in a loud and audible voice, I did proceed to offer the same for sale, and after having cried said tract of land for some time, John G. Carney of this parish became the purchaser of the said tract of land for the price and sum of four hundred and fifty dollars, which sum he paid cash, $450 00. And there being no other property offered for sale at this time belonging to said succession, I, said auctioneer, have closed proceedings the day and date first above written.

HENRY LEONARD, *Auctioneer.*

Attest: H. DAY,
CASWELL WAINWRIGHT.

Date of filing sale of land: Filed as evidence October 20th, 1854.
(Signed) J. B. McCLINDON, *Clerk.*

Inventory and Appraisement.

(Instrument marked B.)

STATE OF LOUISIANA,
Parish of St. Helena.

Be it remembered, that on this the thirteenth day of February, in the year of our Lord one thousand eight hundred and forty-four, I, Samuel Leonard, parish judge and ex-officio notary public in and for the parish and State aforesaid, pursuant to an order of the court of probates, in and for said parish, proceeded at my office, in the town of Greensburg, to make an inventory and appraisement of all the property, both real and personal, belonging to the succession of Sarah Corkern, late of said parish, deceased, in community with her husband, Thomas Wainwright, and having sworn

John Corkern and James Strickland as appraisers, and appointed Henry Leonard and Daniel Newton as attesting witnesses, and having also sworn Thomas Wainwright to make a true presentment of the property to the appraisers, we proceeded to make said inventory and appraisement in the words and figures following, commencing at 12 o'clock m.

1st. Five hundred and sixty acres of land, situated on Cool's creek, bounded on the north by John G. Carney, south by Harvey Tate, east by public land, and west by public land, appraised at the sum of four hundred and fifty dollars.....	$450 00
One hundred and twenty acres of land, situated on the Notalbany river, bounded on the north by Seborn Wainwright, on the south by Elizabeth Watson, east by vacant land, and west by vacant land, appraised at the sum of five hundred dollars.....	500 00
One negro boy, named , aged sixteen years, appraised at the sum of five hundred dollars	500 00
One ox wagon and one yoke of oxen.....	120 00
Seven head of stock cattle, at thirty-five dollars.....	35 00
One year-old colt, at twenty dollars.....	20 00
One cupboard and bureau, at the sum of twenty dollars.....	20 00
	$1,645 00

And there being no other property belonging to said succession offered for appraisement at this time but the above, amounting, by appraisement, to the sum of sixteen hundred and forty-five dollars, we have closed proceedings at 3 o'clock p. m., the day and date first above written.

JOHN CORKERN,
JAMES STRICKLAND,
SAMUEL LEONARD, *P. J.*

Attest: DANIEL NEWTON,
HENRY LEONARD.

Date of filing instrument marked B: Filed as evidence October 20th, 1854.

(Signed) J. B. McCLENDON, *Clerk.*

Document marked B.—Oath of Experts.

(Evidence of Plaintiff.)

THE STATE OF LOUISIANA,
Parish of St. Helena.

We, John Corkern and James Strickland, of said parish, do

solemnly swear that we will make a just and true appraisement of all the property, both real and personal, belonging to the succession of Sarah Corkern, deceased, in community with her husband, Thomas Wainwright, of said parish, to the best of our knowledge and belief: so help us God.

JOHN CORKERN,
JAMES STRICKLAND.

Sworn and subscribed to before me this 13th day of February, A. D. 1844.

SAMUEL LEONARD, *P. J.*

Proces-verbal of Family Meeting.

(Document marked C.—Evidence of Plaintiff.)

THE STATE OF LOUISIANA,
Parish of St. Helena.

To Stephen R. Corkern, Abraham Womack, jun'r, Hillery Kemp, Isaac H. Wright, and Henry Leonard, of said parish, greeting:

You are hereby cited to be and appear at the office of the parish judge of said parish on Saturday, the twenty-fourth day of this present month of February, A. D. one thousand eight hundred and forty-four, to give your advice in a family meeting of the relatives and friends of Mrs. Sarah Corkern, deceased, wife of Thomas Wainwright, of this parish, relative to the terms of sale of a tract of land belonging to the succession of said deceased in community with her said husband, containing five hundred and sixty acres, and bounded as follows: on the north by John G. Carney, south by Harvey Tate, east by John Tate, and west by John Tate, and any other matter relative to the interest of the succession of said deceased; and herein fail not, under the penalty of the law in such cases provided for.

Given under my hand and seal of office on this 24th day of February, A. D. 1844.

SAMUEL LEONARD, *P. J.*

We accept service of the foregoing petition, waiving the formalities of the law in such cases made and provided for.

24th February, A. D. 1844.

S. R. CORKERN,
J. H. WRIGHT,
H. KEMP,
A. WOMACK, JR.,
HENRY LEONARD.

THE STATE OF LOUISIANA,
Parish of St. Helena.

Be it remembered, that on this twenty-fourth day of February, in the year of our Lord one thousand eight hundred and forty-four, I, Samuel Leonard, parish judge and ex-officio notary public in and for the parish and State aforesaid, pursuant to an order of the court of probates of said parish and State, proceeded, at the office of the parish judge of said parish, to convene a family meeting of relations and friends of Mrs. Sarah Corkern, deceased, wife of Thomas Wainwright, of this parish, and composed of the following named persons, viz: Stephen Corkeren, relation, Hillery Kemp, Abraham Womack, jr., Isaac H. Wright, and Henry Leonard, friends of the deceased, for the purpose of fixing the terms of sale of a tract of land situated in said parish, and containing five hundred and sixty acres, and bounded as follows: on the north by John G. Carney, south by Harvey Tate, east by John Tate, and west by John Tate, and belonging to the succession of said deceased, in community with her husband, Thomas Wainwright, and any other matters relative to the interest of said succession; and having sworn the said meeting according to law, they retired to deliberate, and report as follows, viz: That, in their opinion, it will be for the interest of the heirs of said deceased that the tract of land belonging to the said succession, and described above, be sold at probate sale for cash.

And there being no other business before said family meeting at this time, we have closed proceedings on this day and date above written.

J. H. WRIGHT,
H. KEMP,
A. WOMACK, JR.,
S. R. CORKERN,
HENRY LEONARD,
JOHN CORKERN,
Under Tutor.

Attest: DANIEL NEWTON,
THOMAS J. WRIGHT,
SAMUEL LEONARD, *P. J.*

Order for Notice and Public Advertisement of Proceedings of Family Meeting.

STATE OF LOUISIANA,
Parish of St. Helena.

Probate Court.

Ordered, That ten days' public advertisement of the foregoing proceedings of the family meeting in the succession of Sarah Corkern, deceased, wife of Thomas Wainwright, of this parish, be made

according to law, at the court-house door and two other public places in the said parish for the space of ten days, notifying all persons interested to show cause, if any they have, in that time, why said proceedings should not be homologated and confirmed in accordance with law.

Given under my hand this 24th day of February, A. D. 1844.

SAMUEL LEONARD, *P. J.*

Judgment of Homologation.

THE STATE OF LOUISIANA,
Parish of St. Helena.

Probate Court.

There being no legal opposition, after ten days' public advertisement, according to law, at the court-house door and two other public places in said parish, to the within proceedings in the family meeting of the succession of Sarah Corkern, late of said parish, deceased, wife of Thomas Wainwright, of said parish, it is therefore ordered, adjudged, and decreed, that the same be confirmed and homologated, and made a matter of record, according to law.

Given under my hand on this 8th day of March, A. D. 1858.

SAMUEL LEONARD, *P. J.*

Filed 24th February, A. D. 1844.

SAMUEL LEONARD,
Parish Judge.

Date of filing document C: Filed as evidence October 20th, 1854.

(Signed) J. B. McCLENDON, *Clerk.*

Commission to sell Land.

(Document marked D.—Evidence of Plaintiff.)

THE STATE OF LOUISIANA,
Parish of St. Helena.

To Henry Leonard, Esq., Auctioneer of said parish, greeting:

You are hereby authorized to proceed to the court-house of said parish, on this sixteenth day of March, A. D. 1844, and make sale to the highest bidder of a tract of land situated on Cool's creek, and containing five hundred and sixty acres, bounded on the north by John G. Carney, south by Harvey Tate, and east and west by public lands, and belonging to the succession of Mistress Sarah Corkern, late of said parish, deceased, in community with her husband, Thomas Wainwright, of this parish, upon the following terms: cash; which you will not sell for less than the appraised value, which is four hundred and fifty dollars.

Given under my hand and seal of office on this 16th March, A. D. 1844.

(Signed) SAMUEL LEONARD, *P. J.*

Date of filing document D: Filed as evidence October 20th, 1852.

(Signed) J. B. McCLENDON, *Clerk.*

Document marked E.

Sale of land from Burton and Rainer to Wainwright. (Evidence of plaintiff.)

THE STATE OF LOUISIANA,
Parish of St. Helena.

Be it remembered, that on this 18th day of May, eighteen hundred and forty-two, before J. B. Draughan, a notary public, in and for the parish and State aforesaid, duly qualified as such, personally appeared Messrs. John Burton and James M. Rainer, the first of the parish and State aforesaid, and the second of East Baton Rouge, who did declare and say, that for and in consideration of the sum of four hundred dollars to them made payable, as hereinafter named, by Thomas Wainwright, also of said parish and State, they have bargained, sold, transferred, conveyed and delivered unto the said Thomas Wainwright, who is now here present and accepting, all the right, title, interest and claim which they or their heirs or assigns have in and to a certain tract of land, situate in the parish aforesaid, on Terry's creek, bounded north by Caswell Wainwright, east and west by lands of John Tate, and south by lands unknown, containing five hundred and sixty acres, more or less, with all the improvements, rights and privileges unto the same belonging or in anywise appertaining, to his own proper use and behoof forever; said vendors hereby warrant the title of said lands against the claim or claims of all persons whomsoever unto the said vendor, his heirs and assigns. They, said Burton and Rainer, hereby obligate and bind themselves to obtain, or cause to be vested in the said T. Wainwright, all the rights or interest which their wives or any of their heirs have in and to said lands, when called on so to do.

The consideration being four hundred dollars, payable as follows, to wit: one hundred dollars payable on the first of September next, with ten per cent. interest after due until paid, and the second payment of one hundred dollars, due and payable to John Burton, or bearer, on the first day of January, eighteen hundred and forty-four, with like interest after due; the fourth payment in two notes of fifty dollars each, one in favor of the said Burton, and the other in favor of the said J. M. Rainer, both due and payable on the first of January, 1845, with like interest, and the last payment of one hundred dollars, due on the first of January, 1846,

made of two notes of fifty dollars each, one in favor of John Burton, and the other in favor of James Rainer, both drawing like interest, after, with those above named.

To secure the payment of all said notes or payments, with the interest accruing thereon, the said vendors retain a special mortgage on the lands herein sold, which mortgage is granted by the said vendee.

In testimony of which, the parties hereunto set their names, granting and accepting, and before signing the vendee agrees to waive the certificate of mortgage required of the notary, and acquits me, said notary, for the non-production thereof.

Thus done and signed in presence of me, said notary, and in that of S. R. Corkern and Wm. Cole, both witnesses, of the parish and State aforesaid, who have signed these presents as such.

Whereupon I, the said notary, grant these presents under my signature and seal official, on this the day and date first above written.

(Signed) JOHN BURTON,
J. M. RAINER,
THOMAS WAINWRIGHT.

Witnesses: S. R. CORKERN,
WILLIAM COLE.

S. B. DRAUGHAN,
Notary Public.

STATE OF LOUISIANA,
Parish of St. Helena.

I certify that the foregoing instrument of writing has this day been duly recorded in book B, and on pages 72 and 73 of the notarial record of my office.

Given under my seal and signature official, on this fifth day of June, A. D. 1842.

S. B. DRAUGHAN,
Not. Pub.

STATE OF LOUISIANA,
Parish of St. Helena.

I certify that the foregoing instrument of writing has this day been duly recorded in book F, page 364, in the notarial record of my office.

Given under my seal and signature official, on this the 11th day of July, A. D. 1842.

SAMUEL LEONARD, *P. J.*

THE STATE OF LOUISIANA,
Parish of St. Helena.

I hereby certify the foregoing instrument to be a true and correct copy of the original act, as on file and of record in my office, in book F, page 364, of the notarial of my office.

Given under my seal and signature official, on this 9th day of January, A. D. 1854.

H. R. GEORGE,
Recorder.

Date of filing document E: Filed as evidence October 20th, 1854.

(Signed) J. B. McCLENDON, *Clerk.*

Document marked F.

Ratification of Barbary Burton of the sale of John Burton and J. M. Rainer to Thomas Wainwright. (Evidence of Plaintiff.)

THE STATE OF LOUISIANA,
Parish of St. Helena.

Be it remembered, that on this twenty-seventh day of August, eighteen hundred and forty-two, before me, S. B. Draughan, a notary public, in and for the parish and State aforesaid, personally came and appeared Mrs. Barbary Yarer, now the wife of John Burton, both of said parish and State, the said John Burton being also present, authorizing and empowering his said wife thus to act, when the said Barbary *Yeerr*, wife of the said Burton, declared and acknowledged that she does hereby, of her own free will, and under a full knowledge of all the rights and privileges which she enjoys upon the property of her husband, from any cause whatever, under the laws of the State of Louisiana, ratify and confirm a sale made by her said husband and James M. Rainer to Thomas Wainwright of five hundred and sixty acres of land, at four hundred dollars, on the 18th day of March last passed, before me, the notary above named, and that she hereby relinquishes in favor of the said T. Wainwright, his heirs and assigns, all the right or title of any name or nature which she has, or in future may have, in or to the land then and there so sold and transferred by her said husband and the said J. M. Rainer, upon the condition named and set forth in said sale of date 18th May, 1842, the said Wainwright being present, and accepting this act of relinquishment.

In testimony of all which, the parties hereunto set their hands and subscribed their names, the said Barbary granting and relinquishing, the said J. Burton authorizing and empowering, and the said Wainwright accepting and waiving the certificate of mortgage required by the notary, and discharging me, said notary, for the non-production thereof, in presence of me, said notary, and in that of G. W. Amacker and William Bickham, both competent witnesses, of said parish.

Whereupon I, said notary, grant these presents under my seal and signature official, on this the day and date first above written.

The said Barbary Yarer further agrees and binds herself, her heirs and assigns, to warrant and defend the right and title of the land to which she hereby relinquishes her right to the said Thomas Wainwright, and declares that she wishes to ratify said sale, and

to bind herself, her heirs and assigns, jointly and in solido with her said husband and the said Rainer in said sale to the said Wainwright.

Thus done and signed as above named.

(Signed) BARBARA BURTON,
JOHN BURTON,
THOMAS WAINWRIGHT.

Witnesses: WM. BICKHAM,
GEORGE W. ANACKER.

S. B. DRAUGHAN,
Notary Public.

STATE OF LOUISIANA,
Parish of St. Helena.

I hereby certify that the foregoing instrument of writing has this day been duly recorded in book B, pages 79 and 80 of the notarial records of my office.

Given under my signature official and the impress of my seal of office, this 12th day of September, A. D. 1842.

S. B. DRAUGHAN, *N. P.*

STATE OF LOUISIANA,
Parish of St. Helena.

I hereby certify that the foregoing instrument of writing has this day been duly recorded in book G, page 387, of the notarial records of my office.

Given under my seal and signature official on this 29th day of September, A. D. 1842.

SAMUEL LEONARD, *P. J.*

THE STATE OF LOUISIANA,
Parish of St. Helena.

I hereby certify that the foregoing instrument of writing is a true copy of the original as on file, and of record in book G, page 287, of the notarial records of my office.

Given under my seal and signature official on this 9th day of January, A. D. 1852.

H. R. GEORGE,
Recorder.

Date of filing document F: Filed as evidence October 20th, 1854.

J. B. McCLENDON, *Clerk.*

Document marked H.

Certificate of Confirmation.—(Evidence of Pl'ff.)

LAND OFFICE, *St. Helena.*

Commissioner's Report, C.—Certificate No. 130.—New Series.

In pursuance of an act of Congress, passed on the 8th of May,

1822, entitled An act supplementary to the several acts for adjusting claims to lands, and establishing land offices in the district east of the island of New Orleans, we certify that claim No. , in the report of the commissioner, marked (C.) claimed by Robert Yair, original claimant Robert Yair, is confirmed as a donation and entitled to a patent for six hundred and forty acres, situated in the parish of St. Helena, and claimed by virtue of habitation and cultivation prior to the 15th of April, 1813.

Given under our hands this 21st day of June, 1824.

(Signed) SAM'L J. RANNELL,
Register.

(") WILLIAM KINCHEN,
Receiver.

U. S. LAND OFFICE,
Greensburg, La.

I, Cade D. Strickland, jr., register, certify the above to be a true copy of certificate of confirmation No. 130, on file and recorded in this office.

Given under my hand officially this 19th day of October, 1854.

CADE D. STRICKLAND, JR.,
Register.

Affidavit of Z. B. Waller.

STATE OF LOUISIANA,
Parish of St. Helena.

This day personally appeared before me, the undersigned, a justice of the peace in and for said parish, Z. B. Waller, who being duly sworn according to law, deposeth and saith, that some time late in the year one thousand eight hundred and five Doct'r Robert Yair made a settlement on a tract of land lying and being on the creek known by the name of Terry's creek, on the south side, where he continued to improve, cultivate, and inhabit yearly from the time he then settled up to the present date.

(Signed) Z. B. WELLER.

Sworn and subscribed to before me June 24th, 1820.

(Signed) CADE E. STRICKLAND, *J. P.*

LAND OFFICE, *Greensburg, La.*

I certify the above to be a true copy of the affidavit of Z. B. Waller, taken from the original found on file in this office.

Given under my signature officially this 20th day of October, 1854.

CADE D. STRICKLAND JR.,
Register.

No 189 - Ha 42 - Tate & [illegible] Co

Document Marked II

Extract of Map shewing the Survey of Land (Evidence of Plaintiff)

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Affidavit of Elisha Waller.

STATE OF LOUISIANA,
Parish of St. Helena.

Personally appeared before me, Cade D. Strickland, a justice of the peace, Elisha Waller, and after being duly sworn, saith that there is a certain piece or section of land lying on Terry's creek, and parish aforesaid, which section or claim of land was improved by Robert Yair in 1806; and the deponent further says that the said improved land has been kept up in actual cultivation by said Yair, and that it is the only place that the said Yair ever held or claimed in West Florida.

his
ELISHA ⋈ WALLER.
mark.

Sworn to before me, May 20th, 1820.
(Signed) CADE D. STRICKLAND, *J. P.*

LAND OFFICE, *Greensburg, La.*

I certify that the above is a true copy of the affidavit of Elisha Waller, found on file in this office.

Given under my signature officially on the 20th day of October, A. D. 1854.

CADE D. STRICKLAND, JR.,
Register.

Date of filing document H: Filed as evidence October 21st, 1854.

(Signed) J. B. McCLENDON, *Clerk.*

Document marked I.

Extract of Map showing the Survey of Land.—(Evidence of Plaintiff.)

[*For plat see original, page* 42.]

The above is a plat of the tract of land surveyed by me pursuant to an order of 8th district court, in the case of J. G. Carney vs. Charles Tate et als., No. 1,434, N. Amacker and Harris Waller, chain carriers, all of which is respectfully submitted and annexed to the order of survey to me directed, this 18th day of October, 1854.

(Signed) J. B. WOMACK,
Parish Surveyor, St. Helena Parish, La.

(Signed) N. AMACKER,
HARRIS WALLER,
Chain-bearers.

Date of filing document I: Filed October 20th, 1854.
(Signed) J. B. McCLENDON, *Clerk.*

Document marked J.

Application for Order of Survey.—John G. Carney vs. Charles Tate.

No. 1,434.—8th District Court.

In the above case comes the plaintiff, by his counsel, and moves the court for an order of survey of the tract of land claimed in his petition, and that the same be made in accordance with the proces-verbal of sale on file herein, which said proces-verbal was made by Henry Leonard, auctioneer, on the 16th day of March, 1844, said tract containing five hundred and sixty acres, bounded, according to said proces-verbal, on the north by John G. Carney, south by Harvey Tate, and on the east and west by public lands. Further represents that Nancy Tate's heirs have intervened herein, and that they claim to be owners of the tract of land by virtue of a certificate of confirmation as her head-right. Further represents that a survey of said tract of land will be necessary, in order that this court may determine whether the land herein claimed by plaintiff is the same as that settled by the said Nancy Tate, and claimed in the intervention by her said heirs.

The premises considered, petitioner prays that an order be directed to the parish surveyor, or some other suitable person competent to make survey, and that he make a return thereof, with a plat annexed, forthwith, and for costs and general relief in the premises.

(Signed) ELLIS & SMITH.
By his att'y:
JOHN McVEA & D. C. HARDEE.

Motion for and Order of Survey.

In this case, on motion of D. C. Hardee, esq., counsel for plaintiff, it is ordered that an order of survey be granted, directed to J. B. Womack, parish surveyor, and that said survey be made in accordance with the written application this day filed, and that he make his return forthwith.

I hereby certify the foregoing to be a true copy of the original application as now on file in my office, and the original order of court as of record in the minutes of my office.

Given under my signature officially, this 17th day of October, A. D. 1854.

(Signed) G. M. KEMP,
Dep. Clerk.

Date of filing document J: Filed as evidence October 21st, 1854.

(Signed) J. B. McCLENDON, *Clerk.*

Receipt of Thos. Wainwright, Administrator, for money.

(Evidence of Pl'ff.)

THE STATE OF LOUISIANA,
Parish of St. Helena.

Received of Samuel Leonard, parish judge of said parish, the sum of four hundred and fifty dollars, it being the amount of the purchase of a tract of land situated on Cool's creek, containing five hundred and sixty acres, and belonging to the succession of my deceased wife, Sarah Corkern, and which land was sold by Henry Leonard, auctioneer of said parish, in pursuance to an order of the probate court of this parish, on the 16th day of March, A. D. 1844, and which land was purchased by John G. Carney, of said parish, 23d April, A. D. 1844.

(Signed) THOMAS WAINWRIGHT,
Adm'r.

Date of filing receipt: Filed as evidence October 20th, 1854.
(Signed) J. B. McCLENDON,
Clerk.

Notice in regard to Homologation of Family Meeting.

(Evidence of Pl'ff.)

THE STATE OF LOUISIANA,
Parish of St. Helena.

Probate Court.

Whereas the proceedings in the family meeting of the succession of Sarah Corkern, deceased, wife of Thomas Wainwright, of this parish, is now on file in my office, this is therefore to cite and admonish all persons whomsoever to show cause, if any they have, within ten days from the date of this notice, why the same should not be homologated and made a matter of record according to law.

Given under my hand, on this 24th day of February, A. D. 1844.

(Signed) SAMUEL LEONARD, *P. J.*

Date of filing notice: Filed as evidence October 20th, 1854.
(Signed) J. B. McCLENDON, *Cl'k.*

Advertisement for Sale of Land.

(Evidence of Plaintiff.)—Probate Sale.

THE STATE OF LOUISIANA,
Parish of St. Helena.

Pursuant to an order of the court of probates of said parish, I will offer for sale, to the highest bidder, at the court-house of said parish, on Saturday, the sixteenth day of March next, A. D. 1844, a tract of land situated on Cool's creek, in said parish,

bounded north by John G. Carney, south by Harvey Tate, and on the east and west by public lands, and containing five hundred and sixty acres, and belonging to the succession of Mrs. Sarah Corkern, deceased, wife of Thomas Wainwright, in community with her said husband. Terms of sale will be made known on the day of sale.

Given under my hand, on this 13th day of February, A. D. 1844.

(Signed) SAMUEL LEONARD, *P. J.*

Date of filing advertisement: Filed as evidence October 20th, 1854.

(Signed) J. B. McCLENDON, *Clerk.*

Oaths of Tutor and Under-tutor to the Minor Heirs of Sarah Corkern, dec'd.

(Evidence of Plaintiff.)

THE STATE OF LOUISIANA,
Parish of St. Helena.

I, Thomas Wainwright, do solemnly swear that I will do and perform all and singular the duties required of me as tutor, by nature, of the minor children of my deceased wife, Sarah Corkern, viz: Sarah, Lyonal, and Zemily Wainwright, to the best of my skill and ability, and in accordance with the laws of the State of Louisiana: so help me God.

(Signed) THOMAS WAINWRIGHT.

Sworn and subscribed to, before me, this 13th February, A. D. 1843.

(Signed) SAMUEL LEONARD, *P. J.*

THE STATE OF LOUISIANA,
Parish of St. Helena.

I, John Corkern, do solemnly swear that I will do and perform all and singular the duties required of me as under-tutor to the minor heirs of Sarah Corkern, deceased, wife of Thomas Wainwright, of this parish, to the best of my skill and ability, and in accordance with the laws of the State of Louisiana: so help me God.

(Signed) JOHN CORKERN.

Sworn and subscribed to, this 13th February, A. D. 1844.

(Signed) SAMUEL LEONARD, *P. J.*

Date of filing oaths: Filed as evidence October 20th, 1854.

(Signed) J. B. McCLENDON, *Cl'k.*

Petition for Inventory of Property and Tutorship to the Minors of Sarah Corkern, dec'd.

(Evidence of Pl'ff.)

To the Honorable the Judge of the Parish and Probate Court holden in and for the parish of St. Helena, State of Louisiana:

The petition of Thomas Wainwright, of the aforesaid State and parish, respectfully shows:

That his former wife, Sarah Corkern, departed this life some time in the year 1843, and that she left at her decease some property, consisting of real and personal estate, made in community with your petitioner, and that she left also the following minor children, born of said marriage with your petitioner, viz: Sarah, Lyonal, and Zemily, forced heirs of the said Sarah Corkern. And your petitioner further states that there has never as yet been any inventory and appraisement of said community property made, nor any proceedings had, as it respects said minors and community property had in a court of probates, and that no tutor nor under-tutor has as yet been appointed for said minor children.

Wherefore your petitioner prays that an inventory and appraisement of said community property be ordered to take place, and that your petitioner be confirmed as tutor by nature to said minor, and that an under-tutor be appointed for them, and that all proceedings be had that the nature of the case may require.

(Signed) DANIEL NEWTON, *Agent.*

Order on Petition.

STATE OF LOUISIANA,
Parish of St. Helena.

Probate Court.

Upon audience of the foregoing petition, it is ordered that an inventory and appraisement of the property belonging to the succession of Mrs. Sarah Corkern, deceased, wife of Thomas Wainwright, of said parish, in community with her husband, be made according to law, that Thomas Wainwright be confirmed as natural tutor of the minor children of said deceased, Sarah, Lyonal and Zemily, and that an under-tutor be appointed to said minors.

Given under my hand, on this 12th day of February, A. D. 1844.

(Signed) SAMUEL LEONARD, *P. J.*

Date of filing petition: Filed as evidence October 20th, 1854.

(Signed) J. B. McCLENDON, *Clerk.*

Petition for Sale of Land, &c.

(Evidence of Plaintiff.)

To the Honorable the Judge of the Probate Court, holden in and for the parish of St. Helena, State of Louisiana:

The petition of Thomas Wainwright, of said parish and State, respectfully represents, that he is the tutor by nature of the minor heirs of his deceased wife, Sarah Corkern, and that he has, by an order of your honorable court, been confirmed as the same; and that there has been an inventory and appraisement of the succession property of said deceased, in community with your petitioner, and that there is contained in said inventory 560 acres of land, situate in said parish, on the waters of Cool's creek, bounded on the north by J. G. Carney, and on the south by Harvey Tate, and on the east and west by public lands; and that said land has been contracted to said Carney, and he has paid a portion of the purchase price, and that it is necessary that a sale of said land should be made legally, in order to give the said Carney a clear title to said land.

Wherefore your petitioner prays that a sale of said land take place as soon as possible, and that a family meeting of the relations of the minor children (or friends) be convoked, in order to fix on the terms of sale, and that all the relief be granted that the nature of the case requires, &c.

D. NEWTON, *Agent.*

Order for Sale and for Family Meeting.

STATE OF LOUISIANA,
Parish of St. Helena.

Probate Court.

Audience having been had of the foregoing petition, it is ordered that a probate sale of the tract of land described in the foregoing petition be made at the court-house of said parish, on Saturday, the 16th day of March next, A. D. 1844, and that a family meeting, composed of the relatives and friends of the minor children of Mrs. Sarah Corkern, deceased, be convoked, to fix on the terms of sale of said land.

Given under my hand, on this 13th day of February, A. D. 1844.

SHMUEL LEONARD, *P. J.*

Testimony on the part of Plaintiff.

JOHN G. CARNEY
vs.
CHARLES TATE et als.

In this case the following is the evidence taken in open court, to wit:

By Plaintiff.

Title of Probate Sale, by which Mr. Carney obtained possession.—Title Document A. (See page 16.)

Hillery Kemp, being sworn, says the signature of Henry Leonard to document marked A is genuine. Thinks the said Leonard acted as auctioneer of this parish—is not certain; is not certain whether the said Leonard acted as auctioneer in the year 1844 or not. Does not know the signature of Mr. Wainwright. Thinks the signature of Mr. Day to be genuine.

Cross-examined: Says the *witness* to the instrument were residents of the parish at the time.

Mr. N. Amacker, sworn, says he knows Caswell Wainwright; he was the son of Thomas Wainwright, the warrantor in this suit. Cannot say positively the signature to be genuine, but thinks it is. Mrs. Sarah Corkern was his mother; she married Thomas Wainwright.

Mr. John Corkern, being sworn, says he is acquainted with Caswell Wainwright; cannot say the signature is genuine—is not acquainted with his handwriting. He is the son of Thomas Wainwright and Sarah Corkern. Has known him ever since he was born, pretty much.

S. B. Draughan, being sworn, on being shown document A, says he has seen Caswell Wainwright sign his name a good many times, and believes it to be his signature.

John M. Vernon sworn, says, on being shown document A, the signature of Caswell Wainwright is genuine; he has went to school with and seen him write his name frequently.

The inventory of the succession of Sarah Corkern, deceased, the order thereon authorizing the sale, marked B. (See page 18.)

The commission authorizing auctioneer to make the sale of the land in controversy, marked D. (See page 23.)

The process verbal of family meeting, C. (See page 21.)

Instrument D. (See page 23.)

The succession papers of Sarah Corkern, dec'd, offered to show that the land in controversy was duly sold in said succession.

The title of M. Rainer, passed before S. B. Draughan to Wainwright, marked E. (See page 24.)

Mr. says, Mrs. Sarah was his sister; she was the first wife of Mr. Thomas Wainwright; they were married in Mississippi; witness does not recollect when it was; they resided here previous to that time, and have resided here ever since up to the time of her death. Witness cannot say what date they were married; 'twas more than 30 years ago; cannot recollect the date of

the death of Mrs. Wainwright; it has been several years ago; he thinks Mrs. Wainwright died in the early part of 1843.

Mr. S. R. Corkern being sworn, says, Mrs. Sarah Corkern was his sister; was the first wife of Thomas Wainwright, of this parish; they were married in the year 1809; witness thinks they were living in this parish; after their marriage they lived in Washington, then moved to this parish; have lived here ever since until she died; witness thinks she died in March, 1842. It might have been in 1843.

The ratification of Mrs. Barbara Burton, wife of John Burton—instrument marked F. (See page 26.)

The receipt of Samuel Leonard, parish judge, of the succession of Sarah Corkern—instrument G. (See page 2.)

Then certificate of confirmation of Robert Yarrow, and affidavit of B. Waller and E. Waller—(see pages 29 and 30)—instrument marked H.

The extract of map showing the survey of the land—instrument marked I. (See page 31.)

The survey made under the order of court—instrument marked J.

Ratification of Elizabeth Yair, at page 26.

Mr. Harris Waller being sworn, says, he is a resident of this parish; has resided here ever since the year 1804; he resides about about 10 miles northeast of Greensburg; has resided at the same place all the time with the exception of about one year; was acquainted with one Robert Yair ever since the year 1804; was well acquainted with him; he lived about a northeast course from Greensburg; lived about 14 miles from witness; Yair lived on a stream called Cool's creek, on the north side; lived there when witness first knew him; had made but a small settlement at the time; had built a house on the land; had cleared some land and cultivated it; he was a married man; continued to reside on the place until his death; his death occurred in 1825 or 1826; at the time of his death he had cleared some 30 or 35 acres; he remained constantly on the place and cultivated up to his death; he was buried on the place; this place was on Cool's creek, which empties into Terrie's creek; it is about a mile from his residence on Cool's creek to where it empties into Terrie's creek; it is about half a mile from the residence on Cool's creek to the nearest point on Terrie's creek, a northeast course. Witness being shown instrument I, says the settlement of Dr. Yair is between the two creeks of the survey, Terrie's creek on the northeast and Cool's creek on the southwest; the family of Dr. Yair continued to reside on the place some time after his death, some 4 or 5 years; says Mrs. Yair was buried on the place also; David Yair one of the sons; Dr. Yair's wife had four children, 2 sons and 2 daughters; two of them

are now residing in this parish—the 2 others are dead; the two daughters are now living in the parish; in 1827 Barbara Yair married Samuel Amacker after the death of Mrs. Yair; Elizabeth Yair lived with Barbara until she married; she married James M. Rainer; after the death of Rainer she married Cade D. Strickland, sen'r; Mr. Samuel Amacker died, after which his widow married John Burton, of this parish; John Yair was never married; David Yair was never married; John Yair died about 1829; David Yair died before his father, witness thinks; does not think John died before his mother; Mrs. Burton and Mrs. Strickland are the only two surviving descendants of Robert Yair, deceased; they were born on the place on which he resided, and resided there. No one taken charge of the place of Yair's for a number of years after his death; Mr. Samuel Amacker resided about 4 miles from that place. On being shown document I, says Dr. Yair's house was about half a mile from the line between John Tate and Robert Yair, on Cool's creek, on map of section 42; his clearing and farm was both above and below his house, extending up and down Cool's creek; his house was near his clearing on the place—upon the place Dr. Yair was living in 1804—and continued to reside there until 1825 or 1826, when he died; Mrs. Yair died in about 1828 or 1829.

Mr. N. Amacker being sworn, says, he was acquainted with Dr. Robert Yair; he resided about four miles below the State line on Cool's creek, between Terrie's and Cool's creek; he lived between a $\frac{1}{4}$ and $\frac{1}{2}$ mile from Terrie's creek; lived near the banks of Cool's creek, some 40 or 50 yards from the stream. Being shown document I, says Dr. Yair's settlement was about the centre point between the upper and lower line of the section, about half a mile from the western sectional line; does not recollect exactly the time of his death; witness was very young; thinks it was about thirty years ago; Dr. Yair resided on the place up to his death. On being shown document I, says Dr. Yair's settlement was on the north side of Cool's creek, about the centre of the section as marked on map by the witness; Dr. Yair had 4 children, two sons who were never married; does not know that he can say when they died; one between 1824 and 1825; they are both dead; two daughters, one of whom married Samuel Amacker; after he died she married Mr. John Burton; the first married Mr. James Rainer; after his death, married Mr. Cade D. Strickland, sen'r; Mrs. Strickland and Mrs. Burton are the only surviving children of Robert and Mary Yair; cannot tell when she died; she resided on the place up to the time of her death; she survived her husband a few years.

John Womack sworn, says, looking upon map marked I, that it is a true representation of the survey made by him. There is a clearing on the northern line. There is an old clearing inside of these sectional lines. Does not know how far that old clearing is

from Terry's creek. Has known old clearing for ten or twelve years. Old clearing is between Cool's creek and Terry's creek. Witness run lines on map by instructions annexed to the survey.

Stephen Corkern recalled: Says Mrs. Wainwright died 26th March, 1843.

Here plaintiffs closed their testimony.

Date of filing testimony on part of plaintiff: Filed October 21st, 1856.

(Signed) J. H. WILLIAMS, *Clerk.*

Testimony on the part of Def'dts.

JOHN G. CARNEY
vs. } No. 1,434.
CHARLES TATE.

Testimony on the part of Defendant.

Document No. 1.—*Notice of Claim of Nancy Tate.*

No. 1. Copy of notice of claim and occupancy. Received. Exceptions reserved by plaintiff.

To James O. Cosby, esq., Land Commissioner of Land Claims west of Pearl river:

SIR: Take notice that I claim as much land as the government will grant by right of settlement and cultivation, settled in September, 1810, by myself, and occupied at present; it lying on Cool's creek, a branch of the Tangipaho, bounded by John Tate on the west side, and by Robert Yarrow on the east side.

(Signed) NANCY TATE.

U. S. LAND OFFICE,
Greensburg, La.

I certify the above is a true copy of notice of claim of Nancy Tate—Cosby, 1813, No. 565—as recorded on page 127 of book 3 of records of notices of claims reported by James O. Cosby, under date of June 7th, 1813.

Signed officially this 26th day of May, 1854.

(Signed) AMOS KENT, *Register.*

Date of filing document 1: Filed October 21st, 1856.

(Signed) JAS. A. WILLIAMS, *Clerk.*

Extract from State Papers, vol. , page 337, offered. Rejected. Exception by def't.

Certificate of register of land office offered and received, and marked 2. Exception by plaintiff.

Document marked 2.—Certificate of Register of Land Office.

(Defendant's Testimony.)

Nancy Tate, No. 183. S. H.

U. S. LAND OFFICE,
Greensburg, La.

I, Amos Kent, register, certify the above is a true copy of abstract of certificate of confirmation granted by commissioners Crosby and Skipwith, recorded on page 198 of book F, No. 1, of records of this office.

Signed officially this 19th day of October, 1852.

(Signed) AMOS KENT, *Register.*

Date of filing document No. 2: Filed Oct 21st, 1856.

(Signed) JAS. A. WILLIAMS, *Clerk.*

Order of survey. Received, and marked 3. Exceptions reserved by plaintiff.

Document No. 3.—Order of Survey.

(Defendant's Testimony.)

Nancy Tate. Cert. No. 183, dated 5th Nov'r, 1819.

LAND OFFICE, GREENSBURG, LA.,
May 23, 1849.

Land in T. 1, R. 7 E.

The legal representatives of Nancy Tate claim a section of land situated in the parish of St. Helena, as a donation, in virtue of a certificate of confirmation dated as above, numbered 183, and signed by Charles S. Cosby, register, and Fulmer Skipwith, receiver, attested by F. Herault.

The register and receiver being satisfied as to the right of Nancy Tate to the aforesaid claim, as also to its locality, order that the claim be surveyed and established as follows, to wit: To run conformably to the original exterior lines of sections 41 (John Tate) and 42, (Rob't Yair) as represented in the map of this office, signed by James P. Turner, deputy surveyor, June 1st, 1827; then commencing at the northwest corner of section 41, run such southeastwardly course or courses through sections 41 and 42, disregarding the dividing line represented on the map aforesaid, to the southeastward corner of section 42, to include the original improvement of Nancy Tate in the northern half of the section so divided, making the claim of Nancy Tate equal in area to the claim of John Tate, in the south of said claim of Nancy Tate, and not interfere with other adjoining claims. It is further ordered that all former

orders, either for the claim of Nancy Tate, John Tate, or Robert Yair, conflicting with this order, be annulled and set aside.

Given under our hands at the land office, date above written.

(Signed) C. D. STRICKLAND, Jr., *Reg'r.*
(") THEODORE GILLESPIE, *Receiver.*

U. S. Land Office, *Greensburg, La.*

I certify the above and foregoing to be a true copy of an order of survey found on page 1,306 of record of order of survey of this office.

Signed officially this 9th day of June, 1854.
(Signed) AMOS KENT, *Register.*

Date of filing document 3: Filed October 21st, 1856.
(Signed) JOS. A. WILLIAMS, *Clerk.*

No. 4. Patent certificate of survey. Received, and marked 4.

Document marked 4.—Patent Certificate of Survey.

(Defendant's Testimony.)

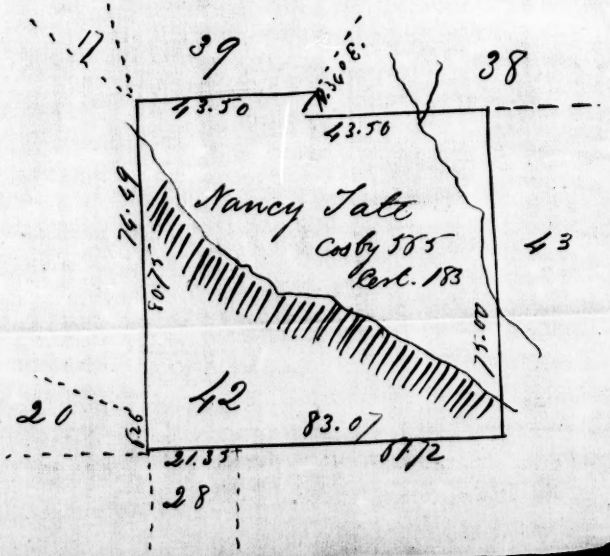
[*For plat see original, page* 60.]

Variation of the needle 7° 50′ east, scale of 40 chains per inch.

The above plat represents the survey of a tract of land confirmed to Nancy Tate by an act of Congress approved the 3d day of March, 1819, being ( ) No. 565 of James O. Cosby's report of 1813, situated in the Greensburg district, State of Louisiana, and has been made out from the approved field-notes of Joseph Froskolowski, deputy surveyor, as follows: Beginning at an old corner, being the S. E. corner of this claim, whence a hickory, 1 ft. dia., S. 57 E., 10 lks.; magnolia, 1 ft. dia., N. 44 E. 14 lks.; ran west 50.32 chs. to an old corner, whence a pine, 18 in. dia., N. 25 W. 23 lks.; red oak, 1 ft. dia., S. 48 E. 40 lks., 61.72 chs.; set post corner to section 43, whence a pine, N. 35 E. 2 ft. dia., 32 lks.; pine, 3 ft. dia., S. 33 W. 62 lks., 83.07 to an old corner of sections $\frac{20}{29}\frac{21}{28}$, being the S. W. corner of this claim, whence a pine, 18 in. dia., N. 34 E. 15 lks.; pine, 18 in. dia., N. 59 W. 59 lks.; red oak, 2 ft. dia., west 9 lks.; pine, 1 ft. dia., S. 46 E. 42 lks.; thence ran north 6.26 chs. to S. E. corner of section 41, whence a red oak, 10 in. dia., S. 52 west 4 lks.; pine, 6 in. dia., N. 64 W. 30 lks.; 75.00 ch cross Cool's creek, 25 lks. wide; runs east 80.75 chs. to an old corner, whence 18 in. dia., S. 85 E. 3 lks.; pine, 2 ft. dia., N. 64 E. ..

No: 189- pa 50

Document marked 4 —
Patent Certificate of Survey
(Defendants testimony)



thence east 43.50 chs., Roberts' west B. & Y., (section 38,) whence a holly, 2 in. dia., S. 73 W. 51 lks.; holly, 10 in. dia., N. 38 E. 12 lks.; thence S. 34 W. 6.35 chs. to S. W. corner of sec. 38, whence a black gum, 18 in. dia., S. 14 E. 21 lks.; beach 10 in dia., N. 58 E. 25 lks; thence ran east on old line 30.00 chs., cross Terry's creek, 100 lks. wide, runs south 32.50 chs.; cross bayou 50 lks. wide, runs south 43.50 chs; set post N. E. corner of this claim, whence a beach 18 in. dia., S. 44 W. 8 lks.; beach, 18 in. dia., S. 12 E. 10 lks.; thence south with the line of section 43, (crossing Terry's creek five times,) 65.00 chs. cross Cool's creek, 20 lks. wide, runs S. E. 75.00 chs. to place of beginning, being section No. 42, in township No. 1 south, of range No. 7 east, of the basis meridian, containing 648 acres and 23 hundredths of an acre.

SURVEYOR GENERAL'S OFFICE.

Examined and approved. Donaldsonville, July 23d, 1853.
(Signed) WM. J. McCULLOCH,
Surveyor General La.

No. 5. Plat and certificate of confirmation (to identify the location of the land) without the note appended. Received and marked 5.

Document marked 5.—Plat and Certificate of Confirmation.

(Defendant's Testimony.)

Patent certificate No. 79.

LAND OFFICE AT GREENSBURG, *State of Louisiana.*

We hereby certify that by the third section of the act of Congress, approved on the third day of March, 1819, entitled "An act for the adjustment of the claims to land, and establishing land offices in the district east of the island of New Orleans," the claim of Nancy Tate, in her own right, entered as No. 565 in the abstract of actual settlers of James O. Cosby's report, dated June 7th, 1813, has been confirmed, and that it appears by the accompanying plat of the survey thereof that the said claim has been surveyed and designated as section forty-two, in township one (south), of range seven east, containing six hundred and forty-eight $\frac{23}{100}$ acres, in the district of lands subject to sale at Greensburg, Louisiana.

Now, therefore, be it known, that on the presentation of this certificate to the Commissioner of the General Land Office, the said Nancy Tate, or her legal representatives, shall be entitled to a patent for the tract of land above described.

Given under our hands the 27th day of July, 1853.

(Signed) AMOS KENT, *Register.*
(Signed) JAMES M. VERNON, *Receiver.*

The above described tract of land was represented on the plat approved June 1st, 1827, as the claim of Robert Yair, Feb. 7th, 1848. The register and receiver decided that sec. 42, T. 1 S., R. 7 E., was the proper location for claim of Nancy Tate—Cosby, 1813, No. 565. See accompanying decision of register and receiver, dated Feb. 7th, 1848.

U. S. Land Office, Greensburg, La., Oct. 6th, 1853.

(Signed) AMOS KENT, *Register.*

T. 1 S., R. 7 E.

[*For plat see original, page* 64.]

LAND OFFICE, *Greensburg, La.*

I certify that the above transcript of T. 1 S., R. 7 E., representing the private claims of Robert Yaire, R. and R., B No. 43, and Nancy Tate—Cosby, No. 565, cert. No. 183—being section No. 42, is a true copy taken from the approved map of said township on file in this office.

Signed officially this 18th Oct'r, 1854.

CADE D. STRICKLAND, JR.,
Register.

Document marked 6.—*Patent.*

(Defendant's Testimony.)

THE UNITED STATES OF AMERICA.

To all to whom these presents shall come, greeting:

Whereas there has been deposited in the General Land Office a certificate, numbered seventy-nine, of the register and receiver of the land office at Greensburg, Louisiana, with a plat of the survey of the land therein mentioned, whereby it appears that by the third section of the act of Congress, approved on the third day of March, one thousand eight hundred and nineteen, entitled "An act for adjusting the claims to land, and establishing land offices in the district east of the island of New Orleans," the claim of Nancy Tate, in her own right, entered in James O. Cosby's list of actual settlers, (No. 565,) has been confirmed, and that the same has been surveyed and designated as section forty-two, in township one (south), of range 7 east, containing six hundred and forty-eight acres and twenty- three hundredths of an acre, in the district of lands subject to sale at Greensburg, in the State of Louisiana, being the same tract which is covered by the claim of Robert Yarr, (or Yair,) entered as number forty-two in Rannell's and Kinchen's register B, number two, dated the nineteenth of January, 1825, and confirmed by the act of Congress approved on the fourth of May, one thousand eight hundred and twenty-six:

Now know ye, that the United States of America, in considera-

tion of the premises, and in conformity with said act of 1819, have remised, released, and forever quit-claimed, and by these presents do remise, release, and forever quit-claim, unto the said Nancy Tate, or her legal representatives, and to her or their heirs, the said tract of land above described, subject to any valid right, if such exists, in virtue of the said confirmed claim of Robert Yaer, and to any other just claim or claims to all and every part thereof, of all and every person or persons, bodies politic or corporate, derived from the United States, or from either the British, French, or Spanish authorities: to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, with the special rervation as aforesaid, and subject to any other just claim or claims as aforesaid, unto the said Nancy Tate, or her legal representatives, and to her and their heirs and assigns forever; so that neither the United States, nor any other person claiming under them, except as is provided in said act, and the reservations aforesaid, may or can set up any right or title thereto.

In testimony whereof, I, Franklin Pierce, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the twenty-fourth day of October, in the year of our Lord one thousand eight hundred and fifty-three, and of the independence of the United States the seventy-eighth.

By the President:

FRANKLIN PIERCE.

By SIDNEY WEBSTER, *Sec'y.*

J. N. GRANGER,
Recorder of the General Land Office.

Recorded vol. 6, pages 348, 349. (E'd.)

Date of filing document 6: Filed October 21st, 1856.

(Signed) JAS. A. WILLIAMS, *Clerk.*

Petition of the heirs of Nancy Tate. Received and marked 7. (Defendant's testimony.)

Document marked 7.—*Petition of Heirs of Nancy Tate, dec'd.*

To the Commissioners of the Land Office of the United States, at Greensburg, parish of St. Helena, State of Louisiana:

Is most respectfully p[illegible]sented the petition of Jesse Tate, Harvey Tate, sen'r, Clarke Tate, sen'r, Avery B. Quillin, assignee of Lewis W. Clery, one of the heirs of Catharine Tate, deceased, Polly Tate, wife of N. Newman, all heirs and representatives of Mrs. Nancy Tate, late of St. Helena parish, deceased, setting forth that the said Nancy Tate is justly entitled to one section of land in said parish from the

government of the United States, under the act of Congress giving and donating to actual settlers prior to 1814 six hundred and forty acres of land; that the said Nancy Tate did actually settle upon public land in township one, range 7 east, and, according to the maps now in said office, upon or adjoining on the north side section No. 41; that about the same time she settled on said land, John Tate also settled upon said section of land, with the view and for the purpose of holding land under said act of Congress; that in consequence of the great proximity of said two settlers to each other, it is impossible that they can both hold and have a square section of land that would be of any use to them. But your petitioners further represent, that there is yet vacant land adjoining said settlement east, to wit: sections Nos. 42 and 43; and also other vacant lands northeast of said settlement by Nancy Tate, not claimed by any person, sufficient to give to the said settlement the full complement by running into said sections 42 and 43, and at the same time not exclude the head-right of the said John Tate.

Wherefore your petitioners pray that an order of survey be granted to the heirs of the said Nancy Tate, deceased, for said section of land, on the proof of said settlement now on file in said office, and other proof which your petitioners are prepared to adduce, to be run as follows: beginning at the northwest corner of section 41; thence running east as many degrees north as will strike the northwest corner of section No. 39; thence along the western line of said section to the point where it touches section 41; thence east to the west corner of section No. 38; thence east, on the southern line of section 38, a sufficient distance to embrace six hundred and forty acres, by running south one-half mile; thence west to the eastern line of section 42; thence northwest, following Cool's creek, the line between sections 41 and 42; thence northwest to the beginning.

Would further represent, that the conflicting claims of John Roberts, John McClendon and John Tate, necessarily compels them to ask for the number of corners above set forth. By granting the order of survey above prayed for, it will not injuriously interrupt or conflict with any other legal claimant.

Your petitioners further pray that John Tate be duly cited to appear on such day as you may designate, to show cause, if any he can, why said order of survey should not be granted. As in duty bound, your petitioners pray, &c.

POLLY NEWMAN, her ✕ mark.

JESSE TATE,

HARVEY TATE, Sr.,

A. B. DEVILLIN,

ELIZABETH WESTMORELAND, her ✕ mark.

CHARLES TATE, Sr.

I hereby consent to the above and join with said petitioners, with the understanding that the survey is not to interfere with section No. 43, which I claim by purchase of Travis's heirs, containing one thousand arpents, which I wish run out according to the present prescribed lines.

(Signed) JOHN TATE.

U. S. LAND OFFICE,
Greensburg, La.

I, the undersigned, register, certify the above to be a correct copy of the original petition on file in this office. October 21st, 1856.

(Signed) CADE D. STRICKLAND, JR.,
Register.

Date of filing document 7: Filed October 2st, 1856.
(Signed) JAS. A. WILLIAMS, *Clerk.*

Notice and citation to John G. Carney, received and marked 8.

Document marked 8.—*Notice and Citation to John G. Carney.*

(Defendant's Testimony.)

UNITED STATES LAND OFFICE,
Greensburg, La.

Mr. John G. Carney:

SIR: You are hereby notified that an application has been filed in this office, by the heirs of Nancy Tate, deceased, for an order of survey for a section of land confirmed to her by the act of Congress approved the 3d day of March, 1819, and claimed under certificate No. 183, being in township one, range 7 east; that application appears to conflict with lands claimed by you under Robert Yair, and represented in his name as section No. 42 in said township.

You are therefore further notified and cited to attend at this office on the 29th day of January next, at the hour of ten o'clock a. m. of said day, to show cause, if any you can, why said order of survey should not be issued as prayed for by said heirs.

Given under our hands and official signatures at said land office on this 31st day of December, A. D. 1847.

(Signed) C. D. STRICKLAND, JR.,
Register.

(Signed) TH'DE GILLESPIE, *Rec'r.*

Received this citation January 4th, 1848, and served January 15th, 1848, by handing a copy hereof to John G. Carney in person at his residence in said parish.

(Signed) N. AMAKER, *Sh'ff.*

U. S. LAND OFFICE,
Greensburg, La.

I certify the above to be a true copy of an original document on file in this office, in relation to the conflicting claims of Nancy Tate and Robert Yair to sec. 42, T. 1, R. 7 east.

Signed officially this 6th day of May, 1854.

(Signed) AMOS KENT,
Register.

Date of filing document 8: Filed October 21st, 1856.

(Signed) JAS. A. WILLIAMS, *Clerk.*

Affidavits of John Roberts and Abraham Womack. Received, to explain the action of the commissioners. Exceptions by pl'ff, marked 9 and 10.

Documents marked 9 and 10.—Affidavits of John Roberts and Abraham Womack.

STATE OF LOUISIANA,
Parish of St. Helena.

Personally appeared Mr. John Roberts, who, on oath, says that he was well acquainted with Nancy Tate, deceased; that he came into the parish in 1811, and at that time Mrs. Nancy Tate was residing near the tract of land owned by me in said parish, and represented on the township map of T. 1, R. 7 E., in my name, as section 38; she lived on the north side of Cool's creek, and about ½ or ¾ of a mile from the southwest corner of my tract as represented on the map, and lived east of John Tate; she occupied a house on the land with her family until her children were married off.

(Signed) JOHN ROBERTS.

Sworn to and subscribed before me, this 29th day of Jan'y, 1848.

(Signed) TH'DE GILLESPIE, *Rec'r.*

U. S. LAND OFFICE,
Greensburg, La.

I certify the above to be a true copy of an original document on file in this office, in relation to the conflicting claims of Nancy Tate and Robert Yair to section 42, T. 1, R. 7 E.

Signed officially this 6th day of May, 1854.

(Signed) AMOS KENT, *Register.*

Filed October 21st, 1856.

(Signed) JAMES A. WILLIAMS, *Clerk.*

THE STATE OF LOUISIANA,
Parish of St. Helena.

Personally appeared at the United States land office, at Greensburg, Mr. Abraham Womack, who being duly sworn, says, that in

the year one thousand eight hundred and ten, he, deponent, came to this State and parish, and that he has resided ever since said year in the parish of St. Helena; that he was well acquainted with one Robert Yair, but that he never any other individual bearing that name; and that if there had been any other than one individual bearing the name of Robert Yair, deponent believes he would have known of him.

(Signed) ABRAHAM WOMACK, his ⋈ mark.

Sworn to and subscribed before me on the 7th day of February, A. D. 1848, by making his ordinary mark.

(Signed) TH'DE GILLESPIE, *Rec'r.*

The intention of the above affidavit is this: that whereas Mrs. Nancy Tate claims a section of land on which it appears that one Robert Yair holds a claim, Robert Yair is confirmed in an adjoining claim of land to that owned by Mrs. Nancy Tate; and it not being lawful for one individual to hold more than one claim by confirmation, it is designed to prove that there was but one individual claiming these two confirmations, to wit: that of sec. 43, in T. 1, R. 7 E., and of sec. 42 in the same township and range.

(Signed) TH'DE GILLESPIE, *Rec'r.*

U. S. LAND OFFICE, *Greensburg, La.*

I certify the above to be a true copy of an original document on file in this office, in relation to the conflicting claims of Nancy Tate and Robert Yair to sec. 42. T. 1, range 7 E.

Signed officially this 6th day of May, 1854.

(Signed) AMOS KENT, *Register.*

Date of filing documents 9 and 10: Filed October 21st, 1856.

(Signed) JAS. A. WILLIAMS, *Clerk.*

Judgment of the commissioners, offered for the purpose of explaining action of commissioners, received and marked 11. Exception by plaintiff.

Document marked 11.—*Decision of Register and Receiver of Conflicting Claims.*

(Defendant's Testimony.)

UNITED STATES LAND OFFICE, GREENSBURG, LA.,
February 7th, 1848.

Jesse Tate and others file a petition in this office, praying that the legal representatives of Nancy Tate, deceased, be allowed six hundred and forty acres of land as a donation. It appears from the evidence of John Roberts, taken before the receiver at this office on Saturday, the 29th of January, 1848, that the said Nancy

Tate, deceased, resided upon said tract of land, being section 42, T. 1, R. 7 E., as early as the year 1811; and it further appears that a certificate of confirmation, No. 183, issued in favor of said Nancy Tate. Robert D. Yair also claims this section of land, by subsequent confirmation as a donation. After taking this matter under advisement and thorough investigation, we are satisfied that there never resided such an individual as Robert D. Yair in the parish of St. Helena, where the aforesaid described land is situated; it being proven by the evidence of Abraham Womack, an old citizen, that there was but one individual named Robert Yair in this parish, (St. Helena;) and it further appearing that he, Yair, was already (at the time of R. D. Yair's confirmation) holder of a donation for one thousand arpents. We decree that by virtue of the 3d section of the act approved 8th May, 1822, which declares that "not more than one tract of land shall be granted to any one person as a donation," &c., Robert Yair could not hold more than one section of land as a donation.

It is therefore ordered, that the claim of Robert D. Yair, sec. 42, be annulled and set aside, and that the claim of Nancy Tate be established so as to include her original improvement.

And it is further ordered, that the claims of John Tate and Mrs. Nancy Tate jointly embrace the sections 41 and 42, and respectively and separately include their original improvements.

(Signed) C. D. STRICKLAND, Jr., *Register.*
(Signed) TH'DE GILLESPIE, *Receiver.*

U. S. Land Office, *Greensburg, La.*

I certify the foregoing to be a true copy of settlement of and decision of the conflicting claims of Nancy Tate and Robert Yair to section 42, T. 1, R. 7 E., as recorded on page 1245 of records of orders of survey of this office.

Signed officially this 6th day of May, 1854.

(Signed) AMOS KENT, *Register.*

Date of filing document 11: Filed October 21st, 1856.
(Signed) JAS. A. WILLIAMS, *Clerk.*

Notice of Robert Yair to commission. Received, to show that any legal claim of Yair does not affect the situs of this claim. Exception by plaintiff. Marked 12.

Document marked 12.—*Notice of Rob't Yair to Commission.*

St. Helena, Louisiana,
12*th October*, 1814.

Received of Robert Yair the following papers, to be recorded in the office of the clerk to the commissioners of land claims west of Pearl river and east of the Mississippi, viz:

An order of survey for 1,000 arpens of land in the parish of St. Helena, in favor of Robert Yair, dated 8th of August, 1806.

A certificate of the vacancy of lands in the parish of Feliciana, in favor of John Walsh and Richard Murphy, given by V. S. Pintado, S. G., 15th Nov., 1810.

John Welsh's assignment of 83 certificate to Rob't Yair, dated 16th July, 1804.

Recorder's fees, $5 6¼.

CHARLES S. COSBY, *Cl'k.*

LAND OFFICE, *Greensburg, La.*

I certify that the above is a true copy of the original notice, on file in this office.

Signed officially the 21st day of October, A. D. 1854.

(Signed) CADE D. STRICKLAND, *Register.*

Date of filing document 12: Filed October 21st, 1856.

(Signed) JAS. A. WILLIAMS, *Clerk.*

Extract of State papers offered to show that Yare and Yar were the same person. Rejected. Exception by defendant. John G. Carney vs. Charles Tate et al.

Abraham Womack, sen'r, sworn.

(Defendant's Testimony.)

Does not know that he knew Nancy Tate; there was a Nancy Tate lived on Cool's creek in 1811 or 1812. Knew Robert Yair in 1810, who lived on Terry's creek; never was at his house; thinks he lived there until he died; does not know when he died; never knew but one Robert Yair; he came here in 1810, and was then a man grown; has been well acquainted in the parish since he came here. If there was any more Robert Yare, he does not know. Robert Yare had two sons; had two daughters, Mrs. B. Burton and the wife of Cade D. Strickland, sen. The sons died, one of them nearly grown. Does not know the size or age of the other.

Cross-examined: Thinks he has seen Mrs. Tate; never was at her house; does not know of his personal knowledge that she lived on Cool's creek. Never was at the residence of Yair. The country was then, in 1810, thinly settled.

Harris Waller sworn: He knew Nancy Tate very well; her heirs were Elizabeth Westmoreland, John Tate, James Tate, Charles Tate, Harvey Tate, Jesse Tate, Polly Newman, and one other, whose name he can't recollect; knew where Mrs. Tate lived very well; has been at her residence often; she lived on the north side of Cool's creek. Was well acquainted with Robert Yair; has been at his house often; he lived on the north side of Cool's creek,

in the fork of the creek, close to the bluff of the creek; knew but one Robert Yair, who had two sons.

Cross-examined: The improvement of Mrs. Nancy Tate was about a mile above Dr. Yair's, on the same creek, and on the same side of the creek; it is about a mile from the junction of the two creeks to the residence of Dr. Yair. The nearest part of the improvement of Mrs. Tate to the improvement of Dr. Yair was less than one mile; the first improvements of Dr. Yair and Mrs. Tate were about one-half or three-quarters of a mile apart, Dr. Yair's having been made first; Mrs. Tate made an improvement, and when the land was divided between her claim and the claim of Dr. Yair, in running the line a part of her improvement was run on to Yair's land; the improvement thus run on to Yair's land consisted of some five or six acres of cleared land; this improvement was a part of a little field of some ten or twelve acres, which was situated about half a mile from each residence. Woodland lay between the little field and her main improvement; at the time this little field was made, the improvement around or about the dwelling was some twenty or thirty acres, which lay mainly above the dwelling. Dr. Yair lived on his improvement from 1804 (and supposes he settled there in 1802 from the improvement) until he died, in about the year 1825; he had no other residence; his improvements consisted in some twenty-five or thirty acres cleared land, dwelling-house, and log cabins; does not know that there was any conditional line between them; knew of no contest between them about boundary; witness lived about four miles from them; their claims were separate. Mrs. Tate died after Dr. Yair; she died about twelve or fifteen years ago. Is acquainted with Cool's creek; her residence on Cool's creek is at a point where the creek runs nearly due west; Mrs. Tate settled the place; John Tate, her son, came out on Tiefa and made a crop, then returned and located near his mother's residence, about three hundred yards from his mother's, and above her; Mrs. Tate had been living there one year before John settled there; John cleared a little field above described; Mrs. Tate's improvement was run by the claim of John Tate; Mrs. Tate's residence was above the little field. Dr. Yair left a widow, who continued to reside upon his place until her death, in 1829 or 1830; after her death the place was left vacant for several years. Samuel Amacker married a daughter of Mrs. Yair. Charles Tate, son of John Tate, moved into a schoolhouse located on the Yair tract some ten or twelve years ago; continued there a few months, and then moved off. *Harvey* Tate, a brother of his, located his residence on the thousand arpent tract, and fenced and cultivated a part of the Yairs' old field some two or three years, some seven or eight acres of it. Did not see the line run between the Yair land and the Tate land; knows it was run, because he has a tract, the old blaze.

(Documentary.) Certificate of register of land office, offered and received, marked 13.

Document marked 13.—*Certificate of Register of the Land Office.*

(Defendant's Testimony.)

U. S. LAND OFFICE,
Greensburg, Louisiana.

Robert Yar, 1,000 arpens on the last report, No. 634, entered as No. 42 in the report of Rannells and Kinchen, dated January 19th, 1825.

I certify that the above is a true copy of the abstract of certificate of confirmation, No. 634, in favor of Robert Yar, for 1,000 arpens of land, situate in the parish of St. Helena, and also copy of report embracing said claim, taken from the records of this office.

Signed officially this 21st day of October, 1856.

(Signed) CADE D. STRICKLAND, JR.,
Register.

Date of filing document 13: Filed October 21st, 1856.

(Signed) JAS. A. WILLIAMS, *Clerk.*

Inventory of Robert Yair's estate, in probate record-book B, page 337, offered to show that the claims do not conflict. Rejected.

Testimony closed on the part of the defence.

October 21st, 1856.

(Signed) JAS. A. WILLIAMS, *Clerk.*

Relinquishment of Mrs. Barbara Yair of her title to land in favor of T. Wainwright.

(Plaintiff's Testimony.)

THE STATE OF LOUISIANA,
Parish of St. Helena.

Be it remembered, that on this twenty-seventh day of August, eighteen hundred and forty-two, before me, S. B. Draughan, a notary public in and for the parish and State aforesaid, personally came and appeared Mrs. Barbary Yair, now the wife of John Burton, both of said parish and State, the said John Burton being also present, authorizing and empowering his said wife thus to act, when the said Barbary Yair, wife of the said Burton, declared and acknowledged that she does hereby, of her own free will, and under a full knowledge of all the rights and privileges which she enjoys upon the property of her husband from any cause whatever under the laws of the State of Louisiana, ratify and confirm a sale made by her said husband and James M. Rainer to Thomas Wainwright of five hundred and sixty acres of land, at four hundred

dollars, on the 18th day of March last, passed before me, the notary above named, and that she hereby relinquishes in favor of the said T. Wainwright, his heirs and assigns, all the right or title of any name or nature which she has, or in future may have, in or to the land then and there so sold and transferred by her said husband and the said J. M. Rainer, upon the conditions named and set forth in said sale, of date 18th May, 1842, the said Wainwright being present and accepting this act of relinquisment. In testimony of all which the parties hereunto set their hands and subscribe their names. The said Barbary granting and relinquishing, the said John Burton authorizing and empowering, and the said Wainwright accepting and waiving the certificate of mortgage required of the notary for the non-production thereof, in presence of me, said notary, and in that of G. W. Amacker and William Bickham, both competent witnesses of said parish.

Whereupon I, said notary, grant these presents under my seal and signature official on this the day and date first above written.

The said Barbary Yair further agrees and binds herself, her heirs and assigns, to warrant and defend the right and title to the land to which she hereby relinquishes her right to the said Thomas Wainwright, and declares that she wishes to ratify said sale, and to bind herself, her heirs and assigns, jointly and in solido with her said husband and the said Raner, in said sale to the said Wainwright.

Thus done and signed as above named.

BARBARA BURTON,
JOHN BURTON,
THOMAS WAINWRIGHT.

Witness: WILLIAM BICKHAM,
GEORGE W. AMACKER.

S. B. DRAUGHAN,
Notary Public.

STATE OF LOUISIANA,
Parish of St. Helena.

I hereby certify that the foregoing instrument of writing has this day been duly recorded in book B, pages 79 and 80, of the notarial records of my office.

Given under my signature official, and the impress of my seal of office, this 12th day of September, A. D. 1842.

S. B. DRAUGHAN, *N. P.*

Be it remembered, that after having carefully compared the foregoing of instruments' writing with the originals, and finding them to agree in all respects, declare the same to be duly recorded on the day and date mentioned in this caption.

SAMUEL LEONARD, *P. J.*

STATE OF LOUISIANA,
Parish of St. Helena.

I certify the foregoing instrument to be a true copy of the original on file and of record in my office.

Given under my seal and signature official, on this 20th May, 1853.

S. B. DRAUGHAN, *Recorder.*

Date of filing relinquishment: Filed 15th June, 1853.
ASHFORD ADDISON, *Clerk.*

Application for Order of Survey.

No. 1,434.—8th District Court.

J. G. CARNEY
vs.
CHARLES TATE.

In the above case comes the plaintiff, by his counsel, and moves the court for an order of survey of the tract of land claimed in his petition, and that the same be made in accordance with the process-verbal of sale on file herein, which said process-verbal was made by Henry Leonard, auctioneer, on the 16th day of March, 1844; said tract containing five hundred and sixty acres, bounded, according to said process-verbal, on the north by John G. Carney, south by Harvey Tate, and on the east and west by public lands. Further represents that Nancy Tate's heirs have intervened herein, and that they claim to be owners of the tract of land by virtue of a certificate of confirmation as her head-right. Further represents that a survey of said tract of land will be necessary, in order that this court may determine whether the land herein claimed by plaintiff is the same as that settled by said Nancy Tate and claimed in the intervention by her said heirs.

The premises considered, petitioner prays that an order be directed to the parish surveyor, or some other suitable person competent to make survey, and that he make a return thereof, with a plat annexed, forthwith, and for costs and general relief in the premises.

(Signed) ELLIS & SMITH.

By his att'ys:

JOHN McVEA & D. C. HARDEE.

Date of filing application: Filed October 16th, 1854.
(Signed) J. B. McCLENDON, *Clerk.*

[REC. CLXXXIX, D. T., 1859.]—7

Renunciation of Eliz'th Rainer to Thos. Wainwright.

(Plaintiff's Evidence.)

United States of America.

STATE OF LOUISIANA,
Parish of East Feliciana.

Before me, Perry Ripley, a notary public in and for the parish and State above named, regularly commissioned and sworn, *came* personally appeared James M. Rainer, of the parish of East Baton Rouge and State aforesaid; and the said James M. Rainer did declare and say that he had, in conjunction with John Burton, bargained, sold, transferred, and delivered unto Thomas Wainwright, his heirs and assigns, a certain tract of land situate and lying in the parish of St. Helena, State of Louisiana, containing five hundred and sixty acres, for and in consideration of four hundred dollars, as per act of sale executed before S. B. Draughan, a notary public in and for the parish of St. Helena, State of Louisiana, bearing date the eighteenth day of May, A. D. one thousand eight hundred and forty-two, reference thereunto had more fully appears. Also came and appeared Elizabeth Yair, (now Elizabeth Rainer, wife of the said James M. Rainer,) she being of the full age of twenty-one years and authorized hereto by her husband, and I, said notary, first named, having explained to said wife the nature and extent of the liens and privileges reserved to her by law, on the property of her husband, both separate and community, as security for the restitution of any dotal, paraphernal, or other rights of which he may have deprived her; and having questioned her apart from the presence and sight and out of the hearing of her aforesaid husband, touching her willingness to forego and renounce her privileges as aforesaid, in so far as the title to the undivided half of the above named property might be thereby affected, she did say and declare to me that she had of her own free will *renounce* and abandon, and does hereby waive, forego, renounce, and abandon to the said Thomas Wainwright, and whomsoever else it may concern, all rights, liens, and privileges held by or reserved to her as wife as aforesaid, in so far as the title to the property under conveyance might thereby affected.

In evidence of all which the said Elizabeth Rainer and James M. Rainer sign their names hereunto in presence of me, said notary, and John Kernon and Joseph Kelly, competent witnesses, this thirteenth day of August, A. D. eighteen hundred and forty-two.

(Signed) ELIZABETH RAINER,
J. M. RAINER.

Witnesses: JOHN KERNAN,
JOSEPH KELLY.

P. RIPLEY,
Notary Public.

STATE OF LOUISIANA,
Parish of East Feliciana.

I hereby certify that the foregoing is a true copy *that the foregoing is a true copy* of the original on file and of record in my office.

Given under my official signature and seal, this 7th day of November, A. D. 1842.

(Signed) P. RIPLEY,
Notary Public.

THE STATE OF LOUISIANA,
Parish of St. Helena.

I hereby certify that the foregoing instrument of writing has this day been duly recorded in book G, page 314, of the notarial records of my office.

Given under my hand and seal, on this 25th day of November, A. D. 1842.

(Signed) SAMUEL LEONARD, *P. J.*

Filed for record this 25th November, A. D. 1842.

(Signed) SAMUEL LEONARD,
Parish Judge.

Motion for New Trial.

Eighth Judicial District, State of Louisiana, Parish of St. Helena.

JOHN G. CARNEY
vs.
CHARLES TATE.

John G. Carney, plaintiff, now appears, by his counsel, and moves the court for a new trial in the above entitled suit, upon the ground that the verdict of the jury is contrary to law and evidence.

By his att'ys: MUSE & HARDEE,
McVEA & ELLIS.

Date of filing motion: Filed October 24th, 1856.

(Signed) JAS. A. WILLIAMS, *Clerk.*

Verdict.

We, the jurors, find a verdict in favor of defendant and intervenors.

(Signed) G. S. ROBERTS,
Foreman.

Bill of Exceptions by Plaintiff.

8th District Court.

J. G. CARNEY
vs.
CHARLES TATE et als.

Be it remembered, that upon the trial of this cause, the counsel for the intervenors offered in evidence the document No. 12, for the purpose of proving that Robert Yair, under whom the plaintiff claims, had procured and their confirmation of land, and consequently that the title under which plaintiff holds was null, having been (as sought to be shown) obtained in fraud of the law and in violation of its provisions.

To the introduction of said testimony the counsel for the plaintiff objected, on the ground that no such attack had been made upon plaintiff's title in the pleadings, and that the testimony offered was wholly foreign to the issues made up between the parties. But the court received the testimony under the following instructions, viz:

To show any legal title of Yair cannot affect the titles involved in the contestation, which the counsel for defendants and intervenors stated to be their object, not seeking to go beyond the writing of the court.

To which ruling of the court the plaintiff, by his counsel, excepted and tendered this bill of exceptions for the signature of the court.

(Signed) G. W. WATTERSTON,
Judge 8th Jud'l Dist. La.

Date of filing bill of exceptions: Filed October 25th, 1856.
(Signed) JAS. A. WILLIAMS, *Clerk.*

Bill of Exceptions by Defendants.

CARNEY
vs.
CHARLES TATE et als.

Be it remembered, that on the trial of the above cause, defendant's counsel offered in evidence the entry in vol. 3, State Papers, page 71, Abstract of Actual Settlers, the following: "Nancy Tate, settlement September, 1810."

Also the entry on volume 3d State Papers, page 63: "No. 140. Robert Yair claimant; original claimant, Robert Yair; order of survey dated August 8th, 1806, 1,000 arpens; St. Helena. Issued by C. De Grandpré."

Also the entry on volume 4th, State Papers, page 312: "No. 42. Claimant, Robert Yair; original claimant, Robert Yarr; order of survey; date claim, 1806; 1,000 arpens; St. Helena. Issued by Grandpré; inhabitation and cultivation from 1806 to 1824."

The first entry was offered to show the confirmation of defendant's claim. The second and third entries were offered to show that Robert Yair, under whom plaintiff claims, was confirmed in a claim for 1,000 arpents, under the second section of the act of Congress of 1819; therefore that he could not be confirmed in a claim founded on settlement under the third section of said act of

Congress; and further to show that the confirmation in the name of Robert Yarr was a clerical error, and that the name should have been Robert Yair.

To the introduction of which evidence plaintiff's counsel objected, upon the ground that it is not the best evidence, and the objection was sustained. To the opinion of the court in sustaining the objections defendants except and tender this their bill of exceptions.

This court refused to receive the volumes from which pages were proposed to be read, because there was no evidence, intrinsic or otherwise, to show the contained copies of reports or other records belonging to the government of the United States.

(Signed) G. W. WATTERSTON,
Judge 8th Jud'l Dist.

Date of filing bill of exceptions: Filed October 28th, 1856.
(Signed) JAS. A. WILLIAMS, *Clerk.*

Motion for an Appeal.

Eighth Judicial District, State of Louisiana, Parish of St. Helena.

JOHN G. CARNEY
vs.
CHARLES TATE.

John G. Carney, plaintiff in the above entitled suit, now appears, by his counsel, in open court, and respectfully suggests to this honorable court that he considers himself very much injured and aggrieved by the rendition of the verdict of the jury and the judgment of this honorable court rendered therein in the above entitled suit, and prays for an appeal from said verdict and judgment to the hon'ble the supreme court of the State of Louisiana, holding sessions in the city of New Orleans, returnable on the fourth Monday of February next, A. D. 1857.

By his att'ys:
(Signed) MUSE & HARDEE,
McVEA & ELLIS.

Date of filing motion: Filed October 27th, 1856.
(Signed) JAS. A. WILLIAMS, *Clerk.*

Extracts from the Minutes of Court.

JOHN G. CARNEY
vs.
CHARLES TATE et al. } No. 1,434.

October 19th, 1852.

In this case, on motion of E. P. Ellis, esq., of counsel for plaintiff, exceptions filed.

Motion to file Answer, and Order on same.

October 25th, 1852.

In this case, on motion of J. F. Thompson, esq., of counsel for intervenors, it is ordered that he have leave to file his intervention and answer.

Assignment.

January 10th, 1853.

Assigned for trial Tuesday, eleventh day of January, 1853.

Motion for Wainwright to be cited.

January 11th, 1853.

On motion of D. C. Hardee, esq., of counsel for plaintiff, it is ordered that Thomas Wainwright be cited in this case by the service of a copy of petition and citation duly made upon them.

Judgment by Default ordered.

May 18th, 1853.

In this case, on motion of D. C. Hardee, esq., of counsel for plaintiff, it is ordered that a regular judgment by default be entered in this case against Thomas Wainwright, called in warranty.

Motion to set Default aside.

May 30th, 1853.

In this case, on motion of E. T. Merrick, esq., of counsel for defendant, Thomas Wainwright, default be set aside on answer filed and call in warranty allowed.

Order for Default to be set aside.

May 21st, 1853.

In this case, on motion of E. T. Merrick, esq., of counsel for Thomas Wainwright, called in warranty, it is ordered that the judgment by default answered in this case be set aside on answer filed.

Order for Dismissal of Thos. Wainwright.

August 18th, 1853.

This case was submitted on application to dismiss Thomas Wainwright, one of the parties to this suit; and after examination and deliberation, it is ordered that said application be sustained, and that said Thomas Wainwright, adm'r of the estate of Sarah Corkern, deceased, be dismissed hence at plaintiff's costs.

Assignment.

October 17th, 1853.

It is ordered by the court that this case be set for trial Tuesday, 18th.

Order for Continuance.

October 18th, 1853.

In this case it is ordered by the court that this case be continued, the leading counsel of both parties being absent.

Assignment.

May 15th, 1854.

Assigned for Monday, 15th.

Continuance.

May 15th, 1854.

This case laid over by consent of counsel.

Order for leave to file Answer.

May 18th, 1854.

In this case, on motion of D. C. Hardee, esq., it is ordered by the court that he have leave and answer.

Motion to file application for Order of Survey.

October 16th, 1854.

In this case, on motion of counsel for plaintiff, it is ordered that he have leave to file an application for an order of survey.

Order for an Order of Survey.

October 16th, 1854.

In this case, on motion of D. C. Hardee, esq., of counsel for plaintiff, it is ordered that an order of survey be granted, directed to J. B. Womack, parish surveyor, and that said survey be made in accordance with the written application this day filed, and that he make his return forthwith.

Assignment.

October 18th, 1854.

Assigned for Thursday, 19th.

Empanelling of the Jury.

October 20th, 1854.

This case came on pursuant to assignment; then came the following persons of the vicinage, good and lawful jurors, and were duly sworn and empanelled to try the said cause, to wit:

1. Thomas Higginbotham; 2. H. P. Vernon; 3. D. C. Davis; 4. Jesse Bazoon; 5. D. C. Kemp; 6. Hillery H. Waller; 7. Jesse Raner; 8. John Fletcher; 9. Merit G. Kemp; 10. Geo. P. McMichael; 11. Scott Martin; 12. Mathew Richardson.

D. C. Davis was appointed foreman by the court, and after having been proceeded in part, was laid over until to-morrow morning.

Order for Heirs of Defendants to be made parties, and for Continuance.

October 21st, 1854.

This case was taken up and proceeded in, and after closing the evidence of the plaintiff, on motion of Messrs. Penn and Davidson, esqs., and the death and suggestion of the death of defendant, it is ordered by the court that the heirs and representatives of Charles Tate be made parties to this suit, and the case continued.

Order for Recusation.

May 21st, 1855.

In this case the hon'ble judge, having been counselled for plaintiff, ordered a recusation to be entered in this cause.

Assignment.

October 20th, 1856.

Assigned for Monday, 20th October, 1856.

Empanelling Jury.

October 20th, 1856.

This case having been taken up pursuant to assignment, the jury being called, came as follows, to wit:

1. George S. Roberts; 2. Hillery Glasscock; 3. Irwin More; 4. Joseph Killian; 5. William Lee; 6. Daniel McDaniel; 7. William Williams; 8. Joseph Coffman; 9. Harris Waller; 10. Hugh Hall; 11. Z. C. Watson; 12. George Reddin.

George S. Roberts being appointed foreman, and the jury being duly sworn, this case was proceeded in in part, and not being closed at the adjournment of the court, this case was postponed until to-morrow, October 21st, 1856, 9 o'clock a. m.

Plaintiff re-offers testimony taken down on former trial, both parol and documentary, as marked on the various foregoing pages.

Trial resumed.

October 21st, 1856.

In this case the jury were called and trial resumed.

Trial resumed.

October 22d, 1856.

Trial resumed.

Verdict of the Jury.

October 22d, 1856.

In this case the jury, having heard the evidence, the law, and the argument of the counsel, and the charge of the court, retired

to their room to make up their verdict, and returned into open court the following verdict, to wit:

We, the jury, find for the defendants and intervenors.

E. ANDREWS,
Foreman.

Final Judgment.

J. G. CARNEY
vs.
CHARLES TATE et als.

The verdict of the jury, the law and the evidence, being in favor of the defendants and intervenors, heirs of Nancy Tate, it is ordered, adjudged, and decreed, that they be recognised as the owners of the land in controversy, being the same described in the patent issued in their favor, and on file in this suit, as section forty-two, in township one south, of range seven east, containing six hundred and forty-eight acres and twenty-three hundredths of an acre, in the district of lands subject to sale in Greensburg, in the State of Louisiana, and that said heirs of Nancy Tate be quieted in their possession of the same, and that plaintiff pay costs of suit.

October 30th, 1856.

(Signed) G. W. WATTERSTON,
Judge 8th Jud'l Dist. La.

Motion for New Trial and order on same.

October 24th, 1856.

On motion of counsel for plaintiff, it is ordered by the court that he have leave to file a motion for a new trial, which motion having been submitted without argument, it is ordered that the same be overruled and a new trial refused.

Motion for Appeal and order on same.

October 27th, 1856.

On motion of E. P. Ellis, esq., of counsel for plaintiff, it is ordered that an appeal be granted, returnable on or before the fourth Monday of February next, on plaintiff's giving bond in the sum of two hundred dollars.

Appeal Bond.

8th Judicial District Court, Parish of St. Helena, State of Louisiana.

JOHN G. CARNEY
vs.
CHARLES TATE et al.
No. 1,434.

Know all men by these presents, that we, John Guy Carney as

principal, and Isaac H. Wright as security, acknowledge ourselves to be jointly and severally indebted unto Thomas Jennings, administrator of the estate of Elizabeth Westmoreland, deceased, Mary Tate, wife of Nehemiah Newman, Harvey Tate, James Tate, Mrs. Catherine Tate, widow of Willy, dec'd, Jesse Tate, Charles Tate, John Tate, Harvey Carter, tutor of the minor heirs of Nancy Tate, deceased, wife of said Carter, Flora Anna Carter, wife of Jasper N. Carter, Harvey Tate, Obed Tate, A. B. Quillin, tutor of the minor heirs of Caroline Tate, deceased, Obed Tate, administrator of the estate of Charles Tate, deceased, Wilson Tate, tutor of the minor heirs of Charles Tate, dec'd, Tennessee Tate, as administratrix of the estate of James Tate, deceased, and as tutrix to the minor heirs of said James Tate, dec'd, Elizabeth Tate, wife of Emmanuel Catrer, Mozella Tate, wife of Kenion K. Thompson, and Elizabeth Tate, wife of Jefferson J. Waller, in the sum of two hundred dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs and assigns, jointly and severally.

Signed and dated this third day of November, eighteen hundred and fifty-six.

The condition of the above bond and obligation is such, that whereas the above bounden John G. Carney, the plaintiff in the above entitled suit, has sued out his appeal from a final judgment rendered against him in said suit, to the honorable the supreme court of the State of Louisiana, returnable on the fourth Monday of February next, (eighteen hundred and fifty-seven): Now, therefore, if the above bounden plaintiff, John G. Carney, shall well and truly prosecute said appeal with effect, and pay and satisfy any judgment which may be rendered in the premises, together with all interest, costs and damages, then this obligation to be null and void; otherwise to remain in full force and virtue in law.

Signed and executed on the day and date above written.

JOHN G. CARNEY,
J. H. WRIGHT.

Attest: H. KEMP,
J. L. NETTLES.

Date of filing bond: Filed November 3d, 1856.
(Signed) JAS. A. WILLIAMS, *Clerk.*

8th Jud'l Dist. Court.

STATE OF LOUISIANA,
Parish of St. Helena.

I, Jas. A. Williams, clerk of said court, hereby certify that the foregoing seventy-nine pages contain a true, correct, and complete

transcript of all the documents filed, all the testimony adduced, and all the proceedings had, in the suit wherein John G. Carney is plaintiff, and Charles Tate, jr., et als., defendants, in the eighth judicial district court for the parish of St. Helena, State of Louisiana.

In witness whereof I have hereunto set my hand and affixed the [SEAL.] seal of said court, at the town of Greensburg, on this the eighteenth day of February, A. D. 1851.

(Signed) JAS. A. WILLIAMS, *Clerk.*

Proceedings in Supreme Court.

Supreme Court of the State of Louisiana.

The court met, Wednesday, June 17th, 1857. Present, their honors E. T. Merrick, chief justice; Cornelius Voorhies, A. M. Buchanan and J. L. Cole, associate justices.

His honor H. M. Spofford, associate justice, absent.

Mr. Chief Justice Merrick recused himself.

JOHN G. CARNEY, App't
vs.
CHARLES TATE et als., App'ees. } 5,021.

Appeal from the eighth judicial district court, of the parish of St. Helena.

In this cause Mr. Justice Voorhies this day delivered the opinion of the court in writing, in the words and figures following:

The plaintiff brought an action against the defendant, Charles Tate, for the recovery of a tract of land as described in his petition. On the exception of the latter, founded on his disclaimer of possession, the action was dismissed as against him. But the heirs of Nancy Tate, deceased, intervened and claimed the ownership of the land in question, alleging that the same was acquired by their ancestor as a donation in virtue of her settlement right, for which a certificate issued in her favor, and, since the commencement of this suit, a patent.

The plaintiff's answer to this intervention contains a general denial, and an averment that the land in dispute was purchased by him from the community which formerly existed between the late Sarah Corkern and her surviving husband, Thomas Wainwright, who had acquired the same by purchase from John Burton and James N. Rainer; and that he, and those under whom he holds, have been in possession thereof in good faith and without interruption for more than forty years. He therefore pleads the prescription of ten, twenty, and thirty years, as a bar to intervenor's demand..

It is, we think, incontestably shown that Robert Yair, from whom the plaintiff derives his title, settled on the land in question in the year 1805, and continued to reside on the same, im-

proving and cultivating it until his death, in 1825 or 1826, when he had 30 or 35 acres cleared; and his widow continued to reside there until she died, in 1829 or 1830. Barbara and Elizabeth Yair, who were married to Burton and Rainer, under whom Wainwright held, were his only surviving children and heirs, the others having died without issue. On the 21st of June, 1824, the register and receiver of the land office at St. Helena issued a certificate of confirmation in favor of Robert Yair, in pursuance of the act of Congress entitled "An act supplementary to the several acts for adjusting claims to lands, and establishing land offices in the district east of the island of New Orleans," approved the 8th May, 1822. The certificate thus issued shows that Robert Yair was confirmed in his claim as a donation, and entitled to a patent for 640 acres of land. The testimony of N. Amacker, which is uncontradicted, shows that Robert Yair's settlement was on section No. 42, township No. 1 south, of range No. 7 east, about the centre point between the upper and lower line, and about half a mile from the western sectional line. One of the intervenor's witnesses testifies that it is about a mile from the junction of Cool's and Terry's creek to the residence of Robert Yair, whose improvement was about one-half or three-quarters of a mile from that of Mrs. Tate. He says that the former lived on his improvement from 1804 until his death, about the year 1825; that the residence of the latter on Cool's creek is a point "where the creek runs nearly due west." That his son, John Tate, located himself about three hundred yards above her residence one year after she had been residing there. On the other hand, it is shown that the settlement of Nancy Tate, situated about one-half or three-quarters of a mile from that of Yair, was made in the year 1811. If her settlement is situated "at the point where Cool's creek runs nearly due west," as stated by the witness, then it is apparent from the plan in evidence that it is on section No. 41. This also appears from a petition of the heirs to the register and receiver, praying for an order of survey, in which it is declared "that the said Nancy Tate did actually settle upon public land in township No. 1, range 7 east, and, according to the maps now in said office, upon or adjoining the north side section No. 41. That about the same time she settled on said land, John Tate also settled upon said section of land, with the view and for the purpose of holding land under said act of Congress; that in consequence of the great proximity of said two settlers to each other, it is impossible that they can both hold and have a square section of land that would be of any use to them. But your petitioners further represent that there is yet a vacant land adjoining said settlement east, to wit, sections Nos. 42 and 43, and also other vacant lands northeast of said settlement by Nancy Tate, not claimed by any person, sufficient to give the said settlement the full complement

by running into sections Nos. 42 and 43, and at the same time not exclude the head-right of the said John Tate."

On the 31st of December, 1847, the register and receiver addressed a notice to the plaintiff, informing him that the application thus made appeared to conflict with his claim to section No. 42, which he held under Robert Yair, and requiring him to show cause why the order of survey should not issue as prayed for. On the 7th of January, 1848, they decreed that the certificate thus issued in favor of Robert Yair "be annulled and set aside, and that the claim of Nancy Tate be established so as to include the original improvement, and that the claims of John Tate and Mrs. Nancy Tate jointly embrace the sections 41 and 42, and respectively and separately include their original improvements." The decision thus rendered declares that the certificate in question was issued in violation of the provisions of the act of Congress of the 8th of May, 1822, on the assumption that Robert Yair, when the same issued, had already acquired by donation 1,000 arpents of land. In relation to this claim it appears from a document in evidence that on the 12th of October, 1814, Robert Yair filed in the land office at Greensburg, La., "an order of survey for 1,000 arpents of land in the parish of St. Helena in favor of Robert Yair, dated 8th of August, 1806; a certificate of the vacancy of lands in the parish of Feliciana in favor of John Welsh and Richard Murphy, given by U. S. Pintado, S. G., the 15th November, 1810; John Welsh's assignment of said certificate to Rob't Yair, dated 16th July, 1804."

It is therefore evident that this claim was not founded upon the settlement of Yair. If the assignment of Welsh to Yair was prohibited by law, it is clear that the latter acquired nothing thereby. On the other hand, if not prohibited, we are at a loss to discover any good reason why it should have given rise to the nullity of Yair's certificate, founded on his own settlement. But be this as it may, we think the register and receiver clearly had no authority to vacate the certificate in question, issued in accordance with the provisions of the act of Congress, more especially as the plaintiff, and those under whom he holds, had already acquired rights under the same. See the case of Boatner vs. Scott, 1 R., 546, and cases there quoted. But the patent issued in favor of Nancy Tate's heirs, on the 24th of October, 1853, contains a full reservation in favor of the Yair claim. It declares: "being the same tract which is covered by the claim of Robert Yair, entered as number forty-two in Rannell's and Kinchen's register B, number two, dated the 19th of January, 1825, and confirmed by the act of Congress approved on the 4th of May, 1826. The release in favor of the patentee is subject to any valid rights, if any such exist, in virtue of the said claim of Robert Yair." Moreover, it appears from the patent that Robert Yair's claim was confirmed by an act of Congress, passed

on the 4th of May, 1826. No question of location can possibly arise in this case, as the public lands embracing the improvements of the respective parties appear to have been surveyed and laid out into townships, &c., in accordance with the acts of Congress. It is certain that the titles of the respective parties could only be perfected by such official survey, under the authority of the United States.

It is therefore ordered, adjudged and decreed, that the judgment of the court below be avoided and reversed; that the plaintiff be declared the legal owner of the tract of land represented in the township map as section number forty-two, in township number one south, of range seven east, or so much thereof, embracing Robert Yair's improvements, as claimed by the plaintiff in his petition, and that the claim of the heirs of Nancy Tate, the intervenors, be rejected at their costs in both courts.

Bond for Writ of Error.

Know all men by these presents, that we, Thomas Jennings, administrator of the estate of Elizabeth Westmoreland, dec'd, Mary Tate, wife of Nehemiah Newman, and Nehemiah Newman her husband, Harvey Tate, James Tate, Catherine Tate, widow of Welly, deceased, Jesse Tate, Charles Tate, John Tate, Henry Carter, tutor of the minor heirs of his wife Nancy Tate, deceased, Jasper N. Carter, tutor of the minor heirs of his deceased wife, Flora Anna Tate, Harvey Tate, Obed Tate, A. B. Quillin, tutor of the minor heirs of Caroline Tate, deceased, Obed Tate, adm'r of the estate of Charles Tate, deceased, Wilson Tate in his own right, tutor of the minor heirs of Charles Tate, deceased, Tennessee Tate, administratrix of the estate of James Tate, deceased, and tutrix of his minor heirs, Elizabeth Tate, wife of Emanuel Catrer, and her said husband, Mazella Tate, wife of K. K. Thompson, and her said husband, Elizabeth Tate, wife of J. J. Waller, and her said husband, and Ann Tate, wife of Berlin C. Newsom, and the said Berlin C. Newsom, heirs and legal representatives of Nancy Tate, deceased, as principals, and Ashford Addison, Amos Kent and John Finney as sureties, are held and firmly bound unto John G. Carney in the full and just sum of five hundred dollars, to be paid to the said John G. Carney, his certain attorney, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents. Sealed with our seals, and dated this day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

Whereas lately, at a term of the supreme court of the State of Louisiana, held in the city of New Orleans, in a suit depending in said supreme court, wherein the said John G. Carney was plaintiff, and the said Thomas Jennings, adm'r, and others,

his co-principals in this bond, were intervenors and defendants, judgment was rendered against the said Thomas Jennings, adm'r, and his said co-principals in this bond, and the said Thomas Jennings, adm'r, and others, his said co-principals, having obtained a writ of error, and filed a copy thereof in the clerk's office of the said supreme court, to reverse the judgment in the aforesaid suit, and a citation directed to the said John G. Carney, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next.

Now, the condition of the above obligation is such, that if the said Thomas Jennings, adm'r, and his co-obligors as principals in this bond, shall prosecute the said writ to effect, and answer all damages and costs if they fail to make plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) A. B. QUILLIN, [L. S.]
Tutor, and for all the heirs of NANCY TATE, dec'd.
(Signed) AMOS KENT, [L. S.]
(") ASHFORD ADDISON, [L. S.]
(") JNO. FINNEY. [L. S.]

Sealed and delivered in the presence of—
(Signed) R. W. GURLEY.

Approved.
(Signed) J. A. CAMPBELL,
Asso. Just. S. C. U. S.

(*Endorsed:*)

Supreme court of the State of Louisiana. No. 5,021. John G. Carney, app't, vs. Charles Tate et als., app'ees. Bond for writ of error.

Filed June 24th, 1858.
(Signed) EUGENE LASERE, *Clerk.*

Writ of Error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the Honorable the Judges of the supreme court of the State of Louisiana, holding sessions for the eastern district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said supreme court, before you, or one of you, between John G. Carney and Thomas Jennings, adm'r of the estate of Elizabeth Westmoreland, dec'd, Mary Tate, wife of Nehemiah Newman, her husband, Harvey Tate, James Tate, Catherine Tate, widow of Willy, dec'd, Jesse Tate, Charles Ttate, John Tate, Henry Carter, tutor of the minor heirs of his wife, Nancy Tate, dec'd, Jasper N. Carter, tutor of the

minor heirs of his deceased wife, Flora Anna Tate, Harvy Tate, Obed Tate, A. B. Quillin, tutor of the minor heirs of Caroline Tate, deceased, Obed Tate, adm'r of the estate of Charles Tate, dec'd, Wilson Tate, in his own right, tutor of the minor heirs of Charles Tate, dec'd, Tennessee Tate, adm'x of the estate of James Tate, dec'd, and tutrix of his minor heirs, Elizabeth Tate, wife of Emanuel Catrer, and her said husband, Mazella Tate, wife of K. K. Thompson, and her said husband, and Elizabeth Tate, wife of J. J. Waller, and her said husband, Ann Tate, wife of Berlin C. Newsom, and the said Berlin C. Newsom, heirs and legal representatives of Nancy Tate, dec'd, a manifest error hath happened, to the great damage of the said Thomas Jennings, adm'r, &c., and others above named, as by their complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this 17th day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

(Signed) J. W. GURLEY, [SEAL.]
Clerk of the United States Circuit Court for the Eastern District of Louisiana.

Allowed.
(Signed) J. A. CAMPBELL,
Asso. Justice S. C. U. S.

(*Endorsement:*)

Supreme court of the State of Louisiana. No. 5,021. John G. Carney, app't, vs. Charles Tate et als., app'ees.

Writ of error. Copy of writ of error lodged in the clerk's office of the supreme court of Louisiana, holding sessions at New Orleans, in pursuance the statute in such cases made and provided, this 24th day of June, 1858. , attorney of plaintiff in error. Supreme Court.

Filed June 24th, 1858.
(Signed) EUGENE LASERE, *Clerk.*

Citation in Error.

THE UNITED STATES OF AMERICA.

The President of the United States to John G. Carney, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, eastern district of Louisiana, wherein Thomas Jennings, adm'r of estate of Elizabeth Westmoreland, dec'd, Mary Tate, wife of Nehemiah Newman, and Nehemiah Newman her husband, Harvey Tate, James Tate, Catherine Tate, widow of Willy, dec'd, Jesse Tate, Charles Tate, John Tate, Henry Carter, tutor of the minor heirs of his wife, Nancy Tate, dec'd, Jasper N. Carter, tutor of the minor heirs of his deceased wife, Flora Ann Tate, Harvey Tate, Obed Tate, A. B. Quillin, tutor of the minor heirs of Caroline Tate, deceased, Obed Tate, adm'r of the estate of Charles Tate, dec'd, Wilson Tate, in his own right, and tutor of the minor heirs of Charles Tate, dec'd, Tennessee Tate, adm'x of the estate of James Tate, dec'd, and tutrix of his minor heirs, Elizabeth Tate, wife of Emanuel Catrer, and her husband, Mazella Tate, wife of K. K. Thompson, and her said husband, and Elizabeth Tate, wife of J. J. Waller, and her said husband, Ann Tate, wife of Berlin C. Newsom, and the said Berlin C. Newsom, heirs and legal representatives of Nancy Tate, deceased, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error in said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 23d day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

(Signed) J. A. CAMPBELL,
Asso. Justice S. C. U. S.

(*Endorsement:*)

Supreme court of the State of Louisiana. No. 5,021. John G. Carney vs. Charles Tate et als. Citation in error.

Filed June 24th, 1858.

(Signed) EUGENE LASERE, *Cl'k.*

Marshal's Return.

Rec'd June 30th, 1858. Served copy of the within citation in error on John G. Carney in person, at his domicil, in the parish of East Baton Rouge, about 150 miles from New Orleans, and on the 8th day of July, 1858, I returned this writ into court.

(Signed) GEO. CORYELL,
D'y U. S. Marshal Supreme Court.